United States Court of Appeals for the Second Circuit



APPENDIX

74-1674

United States Court of Appeals

For the Second Circuit

VIACOM INTERNATIONAL INC., VIACOM LATINO AMERICANA INC., VIACOM JAPAN INC., VIACOM CANADA LIMITED, VIACOM VIDEO-AUDIO COMUNICACOES LIMITADA, VIACOM INTERNATIONAL LIMITED, VIACOM S. A. and VIACOM INTERNATIONAL PTY. LIMITED,

Plaintiffs-Appellees,

v.

TANDEM PRODUCTIONS, INC.,

Defendant-Appellant.

APPENDIX

VOLUME II OF THREE VOLUMES (Pages 253a to 516a)



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TABLE OF CONTENTS

BERTHANDE AND ENDERGE BERTHANDE ENDERGE EINE EINE EINE EINE EINE EINE EINE EI	
	PAGE
Certified Copy of Docket Ent	1a
Excerpts from the Affidavit of Willard Block, Dated July 5, 1973, in Support of Plaintiffs' Motion for a Preliminary Injunction: Page 1 from "Willard Block" through the End of Paragraph 1; Paragraphs 6, 8, 11, 13-16, 25-27 and 40	13a
Plaintiffs' Notice of Examination, Dated July 6, 1973, and Exhibit Thereto	19a
Deposition Subpoena Duces Tecum, Dated July 6, 1973, to Sheldon Perry, and Exhibit A Thereto	22a
Deposition Subpoena Duces Tecum, Dated July 6, 1973, to Robert A. Daly, and Exhibit A Thereto	24a
Deposition Subpoena Duces Tecum, Dated July 6, 1973 to Elizabeth Wellman, and Exhibit A There- to	26a
Deposition Subpoena Duces Tecum, Dated July 6, 1973, to Samuel C. Cohn, and Exhibit A Thereto	28a
Consent to Change Attorneys	31a
Affidavit of Bernard D. Fischman Annexed to Consent to Change Attorneys	32a
Transcript of Hearing, July 23, 1973 Transcript, pages 2-17	33a
Transcript, pages 33-36, 36a, 37-40, 40a, 41-52, 52a, 55-58	50a

	P	AGE
Transcript of Hearing, July 30, 1973 Transcript, pages 1-34	;	80a
Order That Plaintiff Serve a Second Amended Complaint	1	15a
Second Amended Complaint	1	16a
Answer to Second Amended Complaint	1	29a
Notice of Motion Pursuant to Rules 12(c), 12(f), 12 (h)(2) and 56, Dated September 7, 1973, to Dismiss the Fifth Defense	1	42a
Statement Under Rule 9(g) of the General Rules of the United States District Court for the Southern		
District of New York Affidavit of Otis Pratt Pearsall Dated September 7, 1973, in Support of the Motion to Dismiss the Fifth Defense		44a 46a
Exhibit A—Memorandum of Agreement Dated as of July 10, 1970 Between CBS and Tandem		51a
Exhibit B—Letter Agreement Dated July 21, 1971 Between CBS and Tandem	1	.53a
Exhibit C—Deposition of Norman M. Lear (Excerpts)	. 1	155a
Exhibit D—Letter, December 10, 1970, Perry to Hayes	. 1	157a
Exhibit E—Deposition of James William Hayes (Excerpts)	. 1	159a
Exhibit F—Letter, October 20, 1970, Perry to Hayes; Letter, November 13, 1970, Perry to Hayes; and Letter December 10, 1970, Perry to Hayes	7	161a
00 110,00		

	PAGE
Exhibit G-Letter, July 28, 1971, Nelson to Hayes	163a
Exhibit H—Deposition of Sheldon Perry (Excerpts)	165a
Exhibit I—Article in Broadcasting, August 6, 1973	167a
Affidavit of Cornelius Sullivan Dated September 7, 1973, in Support of the Motion to Dismiss the Fifth Defense	168a
Exhibit A—Letter, August 28, 1973, from Sullivan to Nicol, Together With Statement of Gross Receipts and Costs from Inception Through June 30, 1973	171a
Plaintiffs' Objection to Offer of Proof Submitted by Defendant in Support of Its Fifth Defense	172a
Stipulation re: Admissibility of Documents, Court's Exhibit 1	173a
Order Dated September 17, 1973 and Filed September 19, 1973 Ordering CBS to Be Stakeholder and Viacom International, Inc. and Tandem Productions, Inc. to Interplead Their Respective Claims With Respect to the Property	175a
Trial, September 17, 1973	
Transcript, pages 2-26 Transcript, pages 26-71 Transcript, pages 79-80	203a
Trial, September 17, 1973	
Transcript, pages 83-114	253a
Transcript, page 117	
Transcript, pages 120-121	

	PAGE
Transcript, pages 124-125 Transcript, pages 130-133 Transcript, pages 138-143 Transcript, pages 147-150	294a 299a
Stipulation Re: Payment by CBS to Tandem, Court's Exhibit 3	311a
Exhibit A—CBS Memorandum	313a
Exhibit B—Summary of West Coast Payments Made to Tandem for "All In The Family" Through June 30, 1973	315a
Stipulation Re: Execution of Agreements, Court's Exhibit 2	316a
Exhibit 63—Letter Dated July 29, 1971 With Copies of Memorandum of Agreement Be- tween CBS and Tandem Dated as of July 10, 1970 and an Amendment Thereto Dated July 21, 1971	
Exhibit 64A-1—Proposed Side Letter Between CBS an dTandem Dated August 26, 1971	
Exhibit 171—Revised Version of August 26, 1971 Side Letter Dated September 15, 1971	
Exhibit 172—Letter Dated September 22, 1971	325a
Exhiibt 173—Letter Dated September 30, 1971	327a
Trial, September 18, 1973	
Transcript, pages 163-165, 165a, 166-167 Transcript, page 182 Transcript, page 189 Transcript, pages 197-198 Transcript, pages 199-200	335a 337a 339a

	PAGE
Transcriput, page 203	345a
Transcript, pages 214-215	347a
Transcript, pages 218-220	
Transcript, pages 224-226	
Transcript, pages 240-262	358a
Transcript, pages 266-271	282a
Transcript, pages 276-277, 277a, 278-279	389a
Transcript, page 288	395a
Transcript, pages 306-309	397a
Transcript, pages 312-313	
Transcript, pages 324-326	
Transcript, page 328	409a
Transcript, pages 331-333	
Trial, September 19, 1973 Transcript, pages 343-370, 370a, 371, 371a, 372-	
426	415a
Transcript, pages 427-440	
Transcript, pages 441-442	
Transcript, pages 443-457, 481-521, 521a, 522-529,	
529a, 530-540	520a
Trial, September 20, 1973	
Transcript, pages 554-559	598a
Transcript, pages 560-623	
Transcript, pages 648-650	
Transcript, pages ore documents.	0.14
Offer of Proof Filed by Defendants on or About September 26, 1973 in Support of Affirmative Defense of Antitrust Violation	675a
District to the control of the contr	
Plaintiffs' Objection to Offer of Proof Submitted by Defendant in Support of Its Fifth Defense	
Statement Pursuant to Rule 9(g)	686a

	PAGE
Order Filed October 9, 1973 Directing That Judgment Be Entered Dismissing Action as to CBS	687a
Judgment	688a
Order	689a
Defendant's Notice of Motion Dated October 29, 1973 to Strike Certain Trial Exhibits Offered in Evi- dence by Plaintiffs	691a
Affidavit of Otis Pratt Pearsall Dated November 8, 1973 in Opposition to Defendant's Motion to Strike Certain Trial Exhibits Offered in Evidence by Plaintiffs	6040
by Flaments	094a
Opinion	703a
Corection of Opinion Re: 1/4/74 Opinion No. 40172	728a
Final Judgment	729a
Notice of Appeal	734a
Excerpts from Deposition of	
James William Hayes Martin Perlberger Sheldon Perry Elizabeth Wellman	736a 744a 747a 750a 756a 758a
Norman M. Lear	761a 786a
Andrew Jerrold Perenchio	829a
Allan David Yorkin	834a

TRIAL, SEPTEMBER 17, 1973 (Transcript, pages 83-114) bsg 10 Sipes-direct

A Yes, of course I heard about it under different names at the beginning. There was some change in the title of the show.

- Q At the beginning when that first came to your attention, it had a different name or different names?
 - A It was known under a different name, yes.
- O Do you happen to recall what the initial name was?
- A Well, I remember that at first we discussed it as an extension of Till Death Us Do Part. Then there was another title we used after that which now skips my memory.
- Q Would Whose Were The Days refresh your recollection?
 - A Those Were The Days was the title, yes.

THE COURT: When was that?

THE WITNESS: That was 1970, your Honor, when we first saw the show.

THE COURT: That is what I didn't understand.

Now you are seeing the show, and before you heard about it what happened actually?

Just tell us, did you see a British view?
Was that the British show?

THE WITNESS: No, we saw a pilot made for another

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Who was the particular talent agent involved?

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bsg 12 Sipes-direct That would have been Sam Cohn. A Mr. Cohn was associated in some fashion with 0 CMA? Mr. Cohn is, I think, an executive vice president A of CMA. MR. PEARSALL: I offer Plaintiff's Exhibit 417 for identification in evidence. MR. GOULD: No objection. THE COURT: How are you going to number these for evidentiary purposes? MR. PEARSALL: We have given every document an identification number, and it might facilitate matters if it could have the same number in evidence. THE COURT: I would do that if counsel don't disagree. In other words, instead of making this one, we will make it 417. MR. GOULD: That is agreeable. THE COURT: All right. MR. GOULD: I think that will save us a lot of

time.

THE COURT: Then all we have to do is strike out identification and leave it in evidence.

MR. PEARSALL: I offer Plaintiff's Exhibit 574 for identification in evidence.

bsq 13

Sipes-direct

(Plaintiff's Exhibits 417 and 574 received in evidence.)

- Q I show you Plaintiff's Exhibit 574 in evidence and ask you whether that is a document that you received.
 - A Yes.
- O After you received that Telex, what did you do with respect to All In The Family?
- A Well, I can't remember exactly as to whether I called Mr. Cohn or Mr. Cohn called me shortly thereafter, but Mr. Cohn and I entered into discussions, negotiations regarding a deal or an agreement for All In The Family.
 - Q Had you had previous dealings with Mr. Cohn?
 - A Yes, many.
- Q Confining ourselves for the moment to the period prior to June 24, 1970, Mr. Sines, did you have occasion to have discussions with Mr. Cohn during that period from May 8, which is the date of the Telex which is before you, through or up to June 24, 1970, concerning All In The Family?
 - A Yes.
- Q Approximately how many such discussions did you have with Mr. Cohn?
 - A I can't recall the number. I do know that we

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had several conversations, but that's about as much as I could say now.

Q Were any of those conversations face-to-face meetings?

A My recollection is hazy as to whether they were all on the phone or a mixture of phone conversations and face-to-face talks.

It is my vague recollection that yes, they were face-to-face talks, also involved.

- Q Where did they occur?
- A My recollection is that those conversations that took place in my office.
 - Here in New York?
 - In New York, yes, sir.
- What was the general subject matter of the discussions you had with Mr. Cohn during those preliminary meetings prior to June 24, 1970?

The general subject matter would be putting together a deal for the rights to the program All In The Pamily.

0 Did there come a time when there was a --THE COURT: Excuse me. I just want to get one thing clear in the chronology. When did you see the pilot for the first time?

Sipes-direct

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THE WITNESS: Sir, as far as I can recollect that was early spring of 1970. That must have been February, March, something like that.

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THE COURT: In other words, before the Telex.

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THE WITNESS: Yes, sir.

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THE COURT: How did that get into your hands,

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the pilot? You haven't explained that.

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THE WITNESS: As far as I can recall,

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Mr. Cohn, the CMA agent, and other people working for him

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had brought thepilot to us, and we had screenings in

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our screening room, your Honor.

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Where did those screenings take place,

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Mr. Sipes?

was --

In the CBS building in New York City.

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Did there come a time when there was a negotiating meeting in New York at which others attended besides yourself and Mr. Cohn?

which a number of people attended and which, as far as

I was concerned, the arrangement for All In The Family

MR. GOULD: No, I move to strike that out, sir. THE COURT: All right, strike it out. Just tell

Yes, there was a meeting on June 24, 1970 in

us who was there and what was said.

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bsg 16

Sipes-direct

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A At the meeting on June 24, 1970 present were Mr. Cohn, William Hayes, the business manager of Tandem, I think Irv Wilson who worked with Mr. Cohn at CMA, Art Sekerak of the business affairs department of CBS, and myself.

- Ω Where did that meeting occur?
- A That meeting took place in my office in New York.
 - O Do you know where Mr. Haves has his headquarters?
 - A Mr. Hayes' headquarters is in California.
- 9 So he came in from California for the meeting, did he?

A Yes.

THE COURT: You don't have to receat that. I would like to get moving on the thing unless it's relevant to some jurisdictional point.

MR. PEARSALL: I think it's relevant, your Honor, but not to the jurisdictional point, but that is all right.

- O Can you tell us what happened at the meeting, Mr. Sipes?
- A At the meeting we went over all the basic points of the arrangement between us for All In The Family, and we came to terms.

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MR. GOULD: If your Honor please, I move to strike out the answer as not responsive. I think at this stage we are entitled to his best recollection of the substance of the conversations, who said what?

MR. PEARSALL: Ithink we can get at that.

MR. GOULD: This is just characterization of what happened.

THE COURT: That is all right, I will let it stand, but it won't mean anything unless counsel follows through. He came to terms. So what? What does that mean?

MR. GOULD: He thinks he came to terms.

THE COURT: Or he thinks he came to terms.

MR. PEARSALL: I would like to offer --

THE COURT: You don't have to worry about that. There is no jury here, but I would think he should tell us what happened, who said what and what they agreed on.

MR. PEARSALL: I would like to offer Plaintiff's Exhibit 575 for identification in evidence.

MR. GOULD: I haven't the faintest idea what this is, your Honor.

THE COURT: Look at it.

MR. GOULD: I will object to this until some better basis is established for it.

Mr. Sipes, I show you a document and ask you

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Sipes-direct

whether or not you can identify that document for us.

A These would be the notes taken by Mr. Sekerak at the June 24 meeting.

THE COURT: I take it that comes under paragraph 3 of the stipulation, Exhibit 1, Mr. Gould, does it not.

MR. GOULD: I suppose if he made them in the course of the meeting --

THE COURT: I didn't ask for a speech, Mr. Gould.

I asked you does it or does it not?

MR. GOULD: I am not sure that it does, your Honor.

THE COURT: Then say so.

MR. GOULD: We have never seen this before, and this is the first I have had a chance to look at it.

THE COURT: I really would like to move more expeditiously, gentlemen.

MR. GOULD: I would too.

THE COURT: The answer is yes or no. Either you make an objection or you concede it is under paragraph 3.

MR. GOULD: I will neither concede that now until I get a chance to inspect it. It will take alittle time, your Honor.

Sipes-direct

THE COURT: Look at it.

MR. PEARSALL: This is a good copy of it.
(Paper handed to the Court.)

THE COURT: I am going to rule that the document comes within paragraph 3 of the stipulation and should be received in evidence.

(Baintiff's Exhibit 575 received in evidence.)

MR. GOULD: Is your Honor ruling now that this is necessarily material and relevant to the case.

THE COURT: Certainly. I haven't heard any objection on relevancy.

MR. GOULD: I didn't get a chance, your Honor.

THE COURT: All right, move to strike it at the end.

Q Mr. Sipes, do you recall whether or not in the course of that meeting there was any discussion relating to the timing of production in relation to the timing of air time?

MR.GOULD: If your Monor please, can we not get the witness's best recollection as to conversation?

I thought your Honor had indicated that --

MR. PEARSALL: All right, we can proceed that way.

Q Mr. Sipes, will you give us your best recollection of what took place and who said what to whom

DEX.

beg 20 Sipes-direct

at that Jume 24, 1970 meeting?

don't have to follow it -- you said at the outset that
there were basic points discussed at the meeting. I would
suggest that if you can, give us the basic points, and then
it will make it easier to follow as to what each one said

THE WITNESS: Yes, sir.

about each basic point, if you recall it.

THE COURT: Is that agreeable.

THE WITNESS: Yes, sir.

THE COURT: All right. First give us the basic points then.

THE WITNESS: The basic points of the deal were first --

MR. GOULD: Excuse me. Is the witness using this memorandum to refresh his recollection, or is he giving us his recollection?

He has been given a copy of the memorandum, which is not his memorandum.

THE COURT: Well, anything can refresh a person's recollection.

MR. GOULD: If he needs it.

THE COURT: The question is whether his recollection is exhausted. Can you testify without looking

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Sipes-direct

at this as to what the basic points were generally?

THE WITNESS: I think so, your Honor, but this of course would be a help, if I may.

THE COURT: All right. First put it aside, turn it upside down and tell us.

THE WITNESS: Okay.

THE COURT: That will satisfy counsel.

THE WITNESS: All right. First there was an understanding that this would be a series --

MR. GOULD: I object to that, your Honor.
We are being asked for a conversation, not a
characterization.

THE COURT: I am not going to try an equity case that way, Mr. Gould, and I want you to realize that.

MR. GOULD: This is critical to it. He says there was an understanding.

THE COURT: Let's hear what he says. You didn't let him finish the sentence. What I am trying to convey to you is that my mind will not be poisoned if, after he finishes a sentence, I strike it out.

MR. GOULD: Very well.

THE COURT: That is all I want you to understand. Go ahead.

THE WITNESS: First there was an understanding that

Would you stop there for just a minute,

Mr. Sipes, and describe what the difference is between a

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Sipes-direct

series commitment and a pilot commitment?

Well, a pilot commitment is the commitment by CBS to make one program of the purported series, that program to contain all the elements that would be in the mries, to see whether we would want to move on to a series commitment from that after viewing that pilot.

A series commitment, on the other hand, is a commitment directly to series skipping that script and pilot step.

THE COURT: Even before the pilots were made? Even before succeeding episodes were made?

THE WITNESS: That's correct, your Honor, you are committed for 13 episodes.

Please go ahead.

Another matter that was discussed was the price that would be paid for new episodes and the repeat episodes of the series.

Another factor that was --

THE COURT: No, just go and tell us then, what that was all about.

What was the discussion concerning price?

Well, the discussion concerning price was what we would pay for a new episode and repeat episodes, and it was finally determined that we would pay \$72,500 per new bog 24

Sipes-direct

episode plus a below-line arrangement whereby CBS would cover the difference between \$22,500 below the line and \$30,000 below the line.

In a sense that means that there is another \$7,500 available to the packager that CBS will pay if that money is used.

THE COURT: Was there only one price mentioned?

Did they have a price and did you have a price, and did

you dempromise? What happened.

THE WITNESS: It was a compromise, your Honor, yes based upon all the factors in the deal.

Prior to that, as I recollect, the packager was looking for more money than that. We of course thought that theprice of this taped show should be less than that, and we finally came to an arrangement whereby it would be \$72,500 plus the below-line, and \$18,000 per repeat. That again is in the context of all the matters discussed in the deal.

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Q Was there any discussion as part of that in connection with the price that had been part of the ABC deal? Did that come up in this discussion?

A Well, that I think came up in prior discussion with Mr. Cohen.

- Q Prior discussions?
- As far as I can recollect, Mr. Pearsall.
- Q All right. What was the next thing that was discussed on June 24?

A Another point that was discussed at that meeting was the term of the arrangement.

THE COURT: What did you say?

Honor, the length of the arrangement, and the understanding was that it would be a five-year arrangement if we started in the fall of 1971, and a five and a half year arrangement if we started in started in January 1971.

Another matter discussed at that meeting was the syndication and other distribution rights. Those rights were granted to CBS in the light of the context of the deal.

Another point that was discussed --

THE COURT: Wait a minute. Before you go to that, syndication and what other rights did you say?

THE WITNESS: By that I meant syndication rights,

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merchandising rights.

THE COURT: That would be what?

THE WITNESS: That would be syndication rights, your Honor.

THE COURT: Domestic syndication is one thing.

next thing. The territory that was discussed --

THE COURT: That is what I am trying to get.

Maybe I am going ahead of myself. When you say syndication,

distinguish between --

is domestic syndication and there is foreign syndication.

One of the problems with this particular show was that this was an off-shoot of an English show, and therefore there was some problem with foreign territories, whether or not Tandem had those foreign territories at that time.

The territory that was granted to us originally was United States, its territories and possessions, and Canada.

That territory they had. We knew that there was a problem in the foreign areas because of this off-shoot of an English show.

In context with that, there was some discussion regarding an amount of \$32,000 that, as I recall, Tandem would owe ABC upon the closing of this deal due to theold deal that they had had with ABC.

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Another matter that was discussed were increases in future years for the show, and in relation --

Q Before you get to that, may I ask you how that matter of the \$32,000 came out at that meeting?

A Well, at that particular meeting, as I recall, I refused to give Tandem \$32,000.

Q They wanted \$32,000 for what?

A They wanted \$32,000, period at that time. They
just wanted \$32,000 as part of the deal. I don't want to
characterize that as something extraordinary. I mean packagers
would make requests like that.

Q But how did it come up in connection with the foreign syndication question?

A Well, what I recollect was that right sometime almost immediately after June 24, whether it was a day or two or three later, I did get another call from Mr. Cohen --

Q Lat's get to that when we get to that next point in time. Let's say with the June 24 meeting for the moment.

Do you recall anything further with respect to the \$32,000 request by Tandem at the June 24 meeting?

A I have a recollection that they did ask about the \$32,000. I cannot tell you what else was said about the \$32,000, whether they offered something for it or not as of this -- my recollection is not that fresh except they did ask

was the services of Norman Lear, that Norman Lear was -- he

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was considered by both sides and important element of the show, and that there would -- the services of Norman Lear relating to staging the show and producing the show and being head writer of the show would be included in the arrangement in some form.

Q Was there anything else which occurred at the

meeting which you can recall without refreshing of your recollection?

A Well, I do recall that at that meeting regarding syndication and merchandising, it was discussed that those would be at our standard fees.

Q Do you recall anything further, Mr. Sipes, about that meeting?

A Yes, regarding Norman Lear, that there would be a payment to hold Mr. Lear's services to the show in the event we did not go January 1971 with the show, but if we went in the fall of 1971, with the show, we would in that event pay Mr. Lear an amount of \$100,000.

I do also recall that there was a way of recouping,

I think, to \$50,000 of that out of certain monies that MR.

Lear might make duringthat period of time on other shows or other projects.

Q Do you recall anything further?

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Sipes-direct

A I know there was some discussion of preproduction monies for Tandem. That would be money payable to them prior of course to going into the actual physical production of the show which would help them get started. There was also talk of --

Q Was there discussion of amount?

A Well, as I recall, it was maybe ten or 12 thousand dollars that was necessary for this.

Q Was that the subject to recoupment or was that an outright payment.

A That preproduction money would not be subject to recoupment. There was also talk of advance monies which would be subject to recoupment.

O What was that?

A Advance monies to go into production of the show, to get the show ready for production.

0 What was the discussion about that?

A That they would of course need the money to get the show going, and as I recall there was an understanding that we would give them pre-production money.

Q Do you moall the amount?

A Well, again I think it might have been \$50,000 to get going, and with the understanding there would be more advance monies coming to them as we went along.

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about all I can recall as of the moment.

THE COURT: Was there any question as to whether domestic syndication rights were cleared?

THE WITNESS: No, they were. They had the domestic syndication rights to grant us.

Mr. Sipes, I wonder if you would look at plaintiff's exhibit 575 in evidence. Just look at it.

Is that this?

Yes, that is the document in front of you. See whether or not it refreshes your recollection with respect to other matters. Don't read the document. Just look at the document and then, after you had a chance to look at it, tell us whether it refreshes your recollection as to any other matters.

Well, yes, the understanding was that we would have a series commitment of 13 new programs, and that in the years thereafter, that would go up to 16 new programs; that we would have the right to repeat or get new programs each year up to an amount of 30, no more than 30 programs.

Also, there was quite abit of talk of the controversality of the show, that it was what we considered to be a high-risk, very controversial show, and that it was a real gamble on the part of CBS going with this program.

Was there any discussion as to when the series would Q

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start?

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A Yes, sir. I thought I said that it would start either in January of 1971 or the fall of 1971, as we elected, and if we held over to the fall of 1971, there was a \$100,000 payment due Mr. Lear to hold him, to hold his services to the show.

Q Was there any discussion as to how soon before air time production would occur?

A Well, since again this is supposed was a topical controversial show, we didn't want to be too far ahead in production, because by that, if you had too many shows already produced, you might miss out on some real topical references that would add to the flavor of the show; and therefore, as I recall, the understanding was that the show would never be more than a couple of weeks ahead in production at that time.

THE COURT: I think there was some interruption.

What was said about domestic syndication?

THE WITNESS: What was said, sir? Well, in the light of the price that we were going to pay for the show, they agreed as part of that to give us domestic -- to give us syndication rights.

THE COURT: Before you get to it --

MR. GOULD: I move to strike that out, your Honor.

THE COURT: STrike that out. Just tell us. Start

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Sipes-direct

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out with domestic syndication, who raised it, and what was said by each side.

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THE WITNESS: Well sir, I think that we would have to go back a little bit before June 24.

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THE COURT: Do that then.

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THE WITNESS: As I recall my original discussion with Sam Cohen that took place before June 24, Sam Cohen was looking for more money than he had under his ABC deal.

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Under the ABC deal ABC paid --

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MR. GOULD: I will move to strike out what he was looking for unless he said something.

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THE COURT: It is obvious he means he told him what he was looking for.

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MR. GOULD: Your Honor, I don't like to be cap-

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tious.

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THE COURT: I wish you wouldn't.

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MR. GOULD: When I try not to be captious, when I get to the 17th floor they want to know why I didn't object, and so I have to go right on doing it.

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THE COURT: I repeat again you are trying a case without a jury, and I know when a man says he was looking for omething, that he told him so. Otherwise, how would he know he was looking for something.

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MR. GOULD: Let him say he told him. I would like

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Sipes-direct

to hear him say that Cohen told him.

THE COURT: All right, tell him that. Tell him Cohen told you.

sations we were having, Mr. Cohen did tell me that he wanted more money, as I recall it, then he had gotten under the ABC deal he had, and as I recall the ABC deal, what he told me was it was less money that I finally ended paying him, but he wanted a lot more money than he had under the ABC deal; and as we discussed this back and forth, it came up from the money he had on the ABC deal, and when I said, "Look, this is"--again I can't remember exact conversations, your Honor, but the point was made that this was a highly controversial show from the beginning.

This was very controversial. We felt we were taking big risks in going with this show. We knew it ad been passed on at ABC, and I said, "Well, in the light of that, I'd like the syndication rights;" and as far as I can recall, your Honor, I had no objection from Mr. Cohen regarding in the light of the money that we paid for the show -- in getting those syndication rights as part of the deal.

Q In those earlier discussions with Mr. Cohen, did a question come up as to whether or not a new pilot should be made?

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUS

In these preliminary discussions before the June

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Sipes - direct

THE COURT: One thing I want to understand:

You say he wanted more money than he was getting from ABC, but I have heard nothing about a contract with ABC or anything like it. What do you mean by that?

THE WITNESS: Well, sir, the pilot that we saw was one of I think two pilots made by American Broadcasting Company under an agreement with them for this same show. They did not like the show.

THE COURT: So they exercised --

THE WITNESS: Their rights expired. In other words, they passed on their deal to -- and we saw one of the pilots that they had made previously.

THE COURT: All right. I just wanted the record clear on that. In other words, there was an existing contract which ABE had the right to go out of and which they did?

THE WITNESS: Yes, sir.

All right. Do you recall anything further, based on the notes yes have just looked at, concerning the June 24th meeting, or does that exhaust your recollection?

Well, as I think I said, in each succeeding year of the term we would have to order at least sixteen new programs, and we could not pick up any succeeding year of the term unless we had previously -- in the year previously we

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Sipes - direct .

had ordered at least twenty-two new programs. If we had 3 ordered less than that, our rights would have expired.

Q Now, at the conclusion of that meeting, did the Tandem representatives indicate in any way to you their agreement with these points?

MR. GOULD: Now, if your Honor please, can't we just get one --

THE COURT: Yes; I will sustain your objection. You have now given us point by point what each side said; is that correct?

THE WITNESS: As far as I recollect, your Honor, the basic point of the deal --

THE COURT: Was there any direction to any lawyer or anybody else to draw the contract?

THE WITNESS: Well, Mr. tekerak was there, and it is his duty to get a contract in the works.

Now, after the June 24th meeting, was there any further meeting that you had with any representative of Tandem?

A Well, as I recall, on that same evening or the next evening -- and time is a little telescoped -- I think it was the same evening, after this meeting -- there was a meeting, to use, I think, a bad word -- a lot of us met downstairs on the ground floor, which is a restaurant in the CBS

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Sipes - direct

building. As I vague recall, that was Mr. Hayes, Mr. Cohen, myself; I have a feeling that Irwin Siegelstein of our Program Department was there, and I also have a recollection that Norman Lear was there. I may be wrong, but that's my vague recollection. And we all had a drink there and talked about the arrangement regarding a show. That's again rather vague.

Now, following the gathering at the ground floor, did you have occasion any time in the next few days to talk with Mr. Cohen again about the deal?

A Yes, sir. Mr. Cohen called me, as I say, shortly thereafter, within a couple of days thereafter, and said to me that he had a couple of problems, and could I help him out. Those problems were, one the merchandising rights.

He said that — again I am paraphrasing; my recollection of the conversation was that: "You know Norman. Norman is a very proud writer, a good writer, and he would be terribly upset if somebody else published his works or work", and wouldn't I do something about that? And also he asked me again for help regarding that \$32,000 that they were obligated to pay back to ABC.

I gave him back the merchandising rights. I kept the 15 per cent net share for CBS but gave him back the merchandising rights, and I gave him half of the \$32,000. I gave

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him \$16,000 with the understanding that his clients -- he and his clients would use best efforts in trying to clear those foreign territories that they had not cleared as of that time.

Q Can you tell us what the meaning of merchandising rights is?

A Well, merchandising rights, again, is a loose, wide term which encompasses such things as making sweatshirts with the name "All in the Family" on it, sneakers, toys, dolls, printing books of, say, "All in the Family" scripts.

THE COURT: Archie Bunker monument?

THE WITNESS: I'm sorry, sir?

THE COURT: Archie Bunker monument?

THE WITNESS: Archie Bunker monument, yes.

MR. PEARSALL: Plaintiffs offer Exhibit 400 in evidence and also Exhibit 551.

MR. GOULD: There is no objection.

MR. PEARSALL: May I have just one moment, your Honor?

(Plaintiffs' Exhibits 400 and 551 received in evidence.)

MR. PEARSALL: Plaintiffs' Exhibit 551, your Honor, is a very poor copy, and we would like to substitute another copy as soon as we get one. It's a CBS document.

TRIAL, SEPTEMBER 17, 1973 (Transcript, page 117)

MP 7 Sipes - direct

(To the witness:) Did anybody proceed after that on the theory that you had a deal?

THE WITNESS: Yes, sir.

THE COURT: Circumstantial evidence is also admitted.

MR. GOULD: Yes, your Honor, if we can find out who and what was said.

THE COURT: Who said what?

Q Now, following the --

THE COURT: Wait a minute. Who said what?

THE WITNESS: Well, as I can recall, your Honor,

we said, "We've got a deal."

THE COURT: That was on June 24th?
THE WITNESS: Yes, your Honor.

THE COURT: Well, it seems to me that's what was said. However, I wanted to make sure.

Now, Mr. Sipes, following the conversation you had with Mr. Cohen, was the fact of the deal between Tandem and CBS given any publicity in the trade press?

A I'm sorry. Would you repeat that again?

Q Yes. Following your conversation with Mr. Cohen -THE COURT: What difference does that make, really?
MR. PEARSALL: Well, it goes to the question of
whether or not there was a deal, your Honor. There was no

TRIAL, SEPTEMBER 17, 1973 (Transcript, pages 120-121) Sipes - direct

THE WITNESS: As far as the negotiators are concerned, it is basically a matter of their being in the business, you know, not really any written form.

(Plaintiffs' Exhibit 12 received in evidence.)

MR. PEARSALL: Plaintiffs offer Exhibits 9, 90, 10, 97 and 14.

THE COURT: What is Wally's Castle?

THE WITNESS: Sir, that would, again, be another name for that show at that time. The name changed rather rapidly at the very beginning.

MR. GOULD: No objection to 9. No objection to 90. No objection to 10.

What were the rest of the numbers?

MR. PEARSALL: 97 and 14.

MR. GOULD: 97 no objection. No objection to 14.

THE COURT: Could I interrupt for a question?

On Exhibit 12 there is an enclosure of a draft contract which has a Paragraph 20 that reads:

"CBS may assign its rights hereunder, in full or in part to any person, firm or corporation, provided, however that no such assignment shall relieve CBS of its obligations hereunder."

I notice that in your discussion of the June 24th meeting you mentioned nothing about an assignment clause. Was

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an assignment clause discussed at the June 24th meeting, to your best recollection?

THE WITNESS: To my best recollection, no, sir, because that is not what we considered to be a basic point of the deal. People who are in business with us know that we have an assignment clause in the contract. It is not a basic deal matter.

THE COURT: Well, let me ask you: was there ever a discussion, an oral discussion, between you and anybody on the other side with respect to an assignment clause?

THE WITNESS: During the making of the deal, your Honor? No, sir.

THE COURT: Or at any point up until the final execution of the last agreement.

THE COURT: No. As I said, both Mr. Hayes and Mr. Cohen have done business with us for years, and this is what we consider to be boilerplate and not a basic deal matter.

THE COURT: And you have that clause, do you, in all your syndication provisions?

THE WITNESS: I can't answer whether we have it in all, your Honor, how it is framed in all, but we certainly have an assignment clause.

THE COURT: All right.

MR. PEARSALL: May these be marked in evidence?

TRIAL, SEPTEMBER 17, 1973 (Transcript, pages 124-125)

MP 14

Sipes - direct

at it.

You mean whether he is below the line or above the line?

MR. PEARSALL: Yes, your Honor

THE COURT: Well, let him look at the memorandum.

Q What was that problem about?

A Well, that was a problem as to whether the fee for an associate director was an item above the line or below the line. Basically, it was whether it was going to come out of the moneys that Tandem at that time was receiving for the package or whether - if it was below the line, of course, that would help them, because, as I recall it, we had that override of \$7,500 below the line, so everything that took place below the line might use up some of that money.

THE COURT: Just for the record, would you explain "below the line", what it is about production costs?

THE WITNESS: It is difficult, your Honor, but in shorthand, above the line would be creative talent, directors, writers, everything that you see when you tune the set on, or that somebody wrote the script et cetera. Below the line would be the cameramen, cameras, lighting and those kinds of things. Facilities, basically.

THE COURT: All right. Now we've got it in writing.

Q How was that question resolved?

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Sipes - direct

A Well, as I remember, it was a rather minor item, and we did what Mr. Hayes wanted us to do, which was, I think, put it below the line.

MR. PEARSALL: Plaintiffs offer Exhibit 16 and Exhibit 18 in evidence.

MR. GOULD: No objection to 16. No objection to 18. (Plaintiffs' Exhibits 16 and 18 received in evidence.)

Q Now, following the discussion that you had with Mr.

Cohen on the telephone, did either of the parties take any
action as a consequence of the meeting that had been had on

June 24th with respect to "All in the Family"?

MR. GOULD: I object to it as to its form.

Q Did CBS commence in any way to perform or take any action with respect to "All in the Family"?

THE COURT: All right. Sustained.

A Well, as far as I can recall, we did make an advance payment for the show. I do recall also that Morman Lear and perhaps Bud Yorkin -- I'm not sure -- moved into our TV City Building to work on the show. I think that's about all I can remember.

MR. PEARSALL: Plaintiffs offer Exhibit 402 for identification in evidence.

MR. GOULD: No objection.

THE COURT: All right.

TRIAL, SEPTEMBER 17, 1973 (Transcript, pages 130-133)

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MP 20 Sipes - direct

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certain payments were made by CBS to Tandem. The details of the payments can be put down on a piece of paper or have some people with knowledge check them, and if they are accurate, they can be received in evidence, and we could save all these letters and communications in evidence.

I will stipulate that the show went on the air in January of 1971, and the first series ran for thirteen weeks. We delivered thirteen episodes, and it ran for thirteen weeks, and then there was a renewal.

THE WITNESS: It ran for thirteen repeats.

MR. GOULD: Thirteen repeats. Excuse me.

THE WITNESS: -- which were paid for.

MR. GOULD: Excuse me. -- which were all paid for.

THE WITNESS: And then it was renewed for the following season.

MR. GOULD: All right. We stipulate to all of that. No question about it.

MR. PEARSALL: I am perfectly happy to have all these facts stipulated.

THE COURT: All right. Do you have anything more from Mr. Sipes?

MR. PEARSALL: Yes.

THE COURT: All right. Go to another subject.

MR. PEARSALL: May this be marked?

1 MP 21 Sipes - direct 2 (Plaintiffs' Exhibit 112 received in evidence.) 3 Now, as the initial run of thirteen episodes came 4 to a conclusion, Mr. Sipes, did you have a meeting with the 5 Tandem people in connection with the "All in the Family" 6 agreement? 7 THE COURT: In connection with what? 8 MR. PEARSALL: The agreement on "All in the Family." 9 MR. GOULD: If your Honor please, I have to object 10 to the question because of its content. Of course, he can 11 simply ask him, did he meet with them, who was there, what 12 was said, when, where and so on? But the question as put now 13 has a vice in it. 14 THE COURT: Oh, I agree with that. You haven't 15 objected to parol evidence at all, so I have taken it without 16 objection. MR. GOULD: Well, it has a vice in it as to its form, 17 your Honor. 18 19 MR. PEARSALL: Plaintiffs offer Exhibit 29. May we have this one before the --20 MR. GOULD: Excuse me just a minute, your Honor. 21 22 No objection. (Plaintiffs' Exhibit 29 received in evidence.) 23

Now, Mr. Sipes, in March of 1971 did you have an Q

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Sipes - direct

- A Yes.
- Q And can you tell us where you met them?
- A Well, as I recall, I was on a business trip to California, and I met with the Tandem people in California.
- Q Was there any discussion about the deal with Tandem on "All in the Family"?

A Well, there was a conversation regarding adjustments that they would like made. They told me -- In fact, as I recall, I met with Norman Lear and Bill Hayes, and they felt they had certain problems, and they wanted to see if I could help them out, and we did so. We made some -- we gave them some help.

- Q What was the help that you gave?
- A Well, they felt they needed some financial help, and, as I recall --

THE COURT: You mean in advance?

THE WITNESS: I'm sorry --

THE COURT: In advance?

THE WITNESS: No, sir. What they needed was more money.

THE COURT: Is that how they got 750 more a show?

THE WITNESS: As I recall, what we did at that time

was, one, I turned all the money into a package, which I

will explain to you in a minute. I took the \$7,500 below-

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Sipes - direct MP 23

line override, and I made that a part of their deal, so they got \$80,000 whether they spent it or not, so any savings in that below-line area would flow into Tandem's pocket.

I also gave them a raise -- I think it was \$750 an episode -- and also covered the expense of the inclusion in the show of what we then called "The Black Family", and we paid for those appearances of those people.

Were those changes incorporated in any document?

As I recall, there was an amendment to the arrangement covering those points.

I show you a document and ask you whether or not you can identify that.

Yes. This would be the amendment incorporating those points that we have just discussed.

MR. PEARSALL: Plaintiffs offer Exhibit 66 in evidence.

MR. GOULD: May I just ask him a couple of questions about this document?

THE COURT: Surely.

VOIR DIRE EXAMINATION

BY MR. GOULD:

Mr. Sipes, have you got Exhibit 66 in front of you? 0

No, sir.

MR. PEARSALL: He doesn't.

TRIAL, SEPTEMBER 17, 1973 (Transcript, pages 138-143)

think if the page was retyped at some point it would have a

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And can you tell us briefly what that is?

Viacom is a company engaged in syndication and the cable television business, among other things.

Was Viacom at one time a subsidiary of CBS?

Well, I always thought the subsidiary was CBS Enterprises, and I don't know how it became -- how the company Viacom came into being, so I don't know if Viacom was the name of our subsidiary. I think CBS Enterprises was,

Did there come a time, Mr. Sipes, when the syndication activities of CBS were spun off from CBS in any way?

22 THE COURT: All right. And gives them advertising 23 material as well?

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deals along the way.

THE WITNESS: I would think so, your Honor. I'm not in the syndication business, but I know that --

MP 31

Sipes - direct

THE COURT: And receives the moneys?

THE WITNESS: And collects the moneys.

THE COURT: And debits his account and takes care of remitting the balance to the licensor; is that it?

THE WITNESS: Yes, sir.

THE COURT: Now, for that you don't need film er matges or warehouses or anything; is that right?

THE WITNESS: Well. I would rather you talk to a syndication expert. It's a little different from the motion picture business.

THE COURT: I know it's a little different, but what I am trying to get at is the nature of the functions.

You are not --

THE WITNESS: I am not in the syndication business.

THE COURT: You don't know how the prints are made
in the lab, how that is done?

THE WITNESS: Well, it would depend on the packager for whom the syndication is done. 20th Century has its own arrangements and distributes its own material. We depend on the particular arrangement.

BY MR. PEARSALL:

Q Did there come a time when the syndication activities of CBS were separated from CBS into a different corporation?

A Yes.

MP 33 Sipes - direct

that were in the Syndication Department of CBS?

THE WITNESS: Well, the rest of the people in CBS Enterprises went with Viacom.

THE COURT: Was the Sales Department a part of that syndication group?

THE WITNESS: Yes.

THE COURT: And did any of those sales people go with Viacom?

THE WITNESS: I think so, your Honor. I don't know the names of particular people, but I would think so.

THE COURT: All right. Strike that out. The witness doesn't know.

Q Are you at all familiar with the spin-off transaction?

A Well, again, I say, what does the word "familiar" mean? I had nothing to do with that spin-off transaction, so I am really not familiar, in the close sense of the term.

Q Well, do you know whether or not CBS purported to assign any rights to CBS Enterprises?

MR. GOULD: I object to that.

THE COURT: Sustained.

Q Now, with respect to the syndication rights in "All in the Family", which you have previously testified about, do you know what happened with respect to those

TRIAL, SEPTEMBER 17, 1973 (Transcript, pages 147-150)

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Sipes - cross

Q I think his Honor asked you whether prior to the date that the contract was executed you ever discussed an assignment clause with anybody.

A Well, sir, that is not my understanding of what went there. I asked the Judge whether he meant during the time of the negotiations, and I thought that the Judge says, yes, during that time. I said, during that time, no.

- Q What do you call during the time of the negotiations? What does that mean to you?
 - A Up to the time when we had a deal.
 - Q Up to the time you thought you had a deal?
 - A Well --

THE COURT: Let's get a date. When?

- Q What day?
- A I thought June 24th, your Honor.

THE COURT: All right. So up to June 24th, there was no discussion about an assignment clause?

THE WITNESS: Right, sir.

THE COURT: Was there ever a discussion with the Tandem people before?

THE WITNESS: Yes, sir.

THE COURT: When?

THE WITNESS: I am sorry. This was -- again, vaguely -- some time in, I think, the spring of 1971, when I

MP 38

Sipes - cross

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received -- in a telephone conversation with Mr. Hayes.

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Just you and Mr. Hayes on the telephone?

A As far as I know, Mr. Gould.

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And what conversation Gid you have about the assign-

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ment clause?

Well, as I recall, Bill said, among -- we discussed other business that related to "All in the Family", and one of the points Bill raised was, he said, "We are having a problem on the assignment clause," and I said, "I don't understand. I have heard about this. What is this nonsense aobut an assignment clause? We have an assignment clause."

- Let me interrupt. You said you heard about it? Q
- I beg you pardon?
- Q You told him you heard about it?
- A Well, I can't recall --

THE COURT: Let him finish, Mr. Gould.

A (Continuing) As I recollect the conversation, I said to Bill, "What is the nonsense about an assignment clause? We have our assignment clause, Bill." And during that conversation -- I can't remember if it was that conversation or the one after that -- we discussed --

THE COURT: No. What he said. What did he say? THE WITNESS: Well, I can't exactly remember what he said. He said something about, they seemed to have a

MP 39

Sipes - cross

problem about this assignment clause, or words to that effect, your Honor. I can't exactly recall. And what we decided was, I said that we had our assignment clause, and we evolved together some kind of understanding whereby the parties would try to get together and work out their problems. By that I mean Tandem and Viacom separately, without us.

THE COURT: Excuse me just for a minute, because I've got to understand this.

MR. GOULD: Surely.

THE COURT: In the spring of 1971, had you made the spin-off already?

THE WITNESS: Yes, sir. The spin-off had to be then.

THE COURT: All right --

THE WITNESS: Whenever this conversation took place, there was a Viacom, as I recall it.

THE COURT: And the Viacom was a spin-off company from CBS?

THE WITNESS: Yes.

THE COURT: And the question raised was whether the assignment to Viacom should be prevented with respect to domestic syndication?

THE WITNESS: No, sir. That is not what I am trying to say. Mr. Hayes and I thought, we all do a lot of business

MP 40

Sipes - cross

with each other, and this was a way that maybe everybody's unhappy feelings would be assuaged a little. In other words, we had our assignment clause, as far as that goes. We had our assignment clause, but if Tandem and Viacom could sit down together and work out whatever problems we had with each other regarding syndication, we would not stand in anybody's way, as long as our rights were protected.

THE COURT: Well, did Mr. Hayes ask you to do something, demand anything?

THE WITNESS: No, sir. As I recall, he said, "Well, that sounds fine." Again -- "and we'll get together and talk about Tandem with Viacom."

MR. GOULD: May I proceed, your Honor?
THE COURT: Surely.

- Q When was this conversation, exactly?
- A I'm sorry --
- Q When was this conversation that you had with Mr. Hayes?
 - A When was it?
 - Q Yes.
- A Well, as I told you, I think -- I'm very hazy as to when it was. This was some time in the spring of 1971, as far as I can recall.
 - Q Didn't you make a note of it?

Stipulation Re: Payment by CBS to Tandem Court's Exhibit 3

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

73 Civ. 2941 (M.I.G.)

VIACOM INTERNATIONAL INC., et al.,

Plaintiffs,

against

TANDEM PRODUCTIONS, INC., and COLUMBIA BROADCASTING SYSTEM, INC.,

Defendants.

It Is Hereby Stipulated and Agreed by and between the undersigned attorneys for the respective parties, solely for the purpose of the trial of this action, that:

- 1. The CBS Television Network East Coast Office has paid to Tandem Productions, Inc. in connection with All In The Family the amount of \$149,730.60, as reflected on Exhibit A hereto, and
- 2. The CBS Television Network West Coast Office, through June 30, 1973, has paid to Tandem Productions,

Stipulation Re: Payment by CBS to Tandem

Inc. in connection with ALL IN THE FAMILY the amount of \$6,304,495.00, as reflected on Exhibit B hereto.

Dated: New York, New York September 17, 1973

HUGHES HUBBARD & REED

By s/

Attorneys for Plaintiffs One Wall Street New York, New York 10005

CRAVATH SWAINE & MOORE

By s/

Attorneys for Columbia Broadcasting System, Inc. One Chase Manhattan Plaza New York, New York 10005

SHEA GOULD CLIMENKO & KRAMER

By s/

Attorneys for Tandem Productions, Inc. 330 Madison Avenue New York, New York 10017

Exhibit A Annexed to Stipulation Re: Execution of Agreements CBS Memorandum

(See Opposite)

CBS MEMORANDUM

FROM: Mr. DuBois (CTN)

TO: MR. MILKENS

cc Mr. Garcia

DATE: September 11, 1973

Ref. ADB-97

SUBJECT: EAST COAST PAYMENTS TO TANDEM PRODUCTIONS FOR "ALL IN THE FAMILY"

. Chieff Com

The following payments were made on the East Coast to Tandem Productions for "ALL IN THE FAMILY":

1) Non-Recoupable Production Advances

 October, 1970
 \$ 8,969.11

 November, 1970
 1,751.89

 December, 1970
 1,279.00

Total

\$ 12,000.00

2) Recoupable Production Advances (A)

 July, 1970
 \$ 50,000.00

 October, 1970
 38,590.42

 December, 1970
 21,312.55

Total

109,902.97

- (A) These payments were recouped on the West Coast.
- 3) Canadian Network Profit Sharing 1971-72 Season

September, 1972

27,827.63

Total East Coast Payments

\$149,730.60

If you have any questions, please call me.

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ADB:bw

Exhibit B Annexed to Stipulation Re: Execution of Agreements

Summary of West Coast Payments Made to Tandem for "All In The Family" Through June 30, 1973

(See Opposite 😭)

* Sure serve tope Por se to Charles on " May 1 . . .

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Stipulation Re: Execution of Agreements Court's Exhibit 2

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

It Is Hereby Stipulated and Agreed by and between the undersigned attorneys for the respective parties, solely for the purposes of the trial of this action, that:

- 1. On July 29, 1971, copies of the Memorandum of Agreement between CBS and Tandem, dated as of July 10, 1970, and an amendment thereto dated July 21, 1971, were sent to Martin Perlberger, Tandem's attorney, for execution by Tandem. (See Exhibit 63 annexed hereto.)
- 2. On August 26, 1971, Tandem's attorney, Haldon R. Harrison, returned to CBS copies executed by Tandem of: (a) Memorandum of Agreement dated as of July 10, 1970, between CBS and Tandem, (b) a supplemental letter from Norman Lear to CBS dated July 10, 1970, (c) an amendment dated July 21, 1971 to the Memorandum of Agreement, and also enclosed a proposed side letter between CBS and Tandem, dated August 26, 1971. (See Exhibit 64A-1 annexed hereto.)
- 3. On September 15, 1971, Anne Nelson of CBS sent to Martin Perlberger a revised version of the August 26, 1971 side letter. (See Exhibit 171 annexed hereto.)
- 4. On September 22, 1971, Martin Perlberger returned to CBS copies executed by Tandem of the August 26, 1971

Stipulation Re: Execution of Agreements

side letter between CBS and Tandem. (See Exhibit 172 annexed hereto.)

5. On September 30, 1971, CBS sent to Martin Perlberger executed copies of: (a) Memorandum of Agreement dated as of July 10, 1970 between Tandem and CBS, (b) an amendment dated July 21, 1971 to the Memorandum of Agreement, and (c) a side letter dated August 26, 1971 between Tandem and CBS. (See Exhibit 173 annexed hereto.)

Dated: New York, New York September 18, 1973

HUGHES HUBBARD & REED

By JAMES F. PARVER

Attorneys for Plaintiffs One Wall Street New York, New York 10005

SHEA GOULD CLIMENKO & KRAMER

 $\mathbf{B}\mathbf{y}$

Attorneys for Tandem Productions, Inc. 330 Madison Avenue New York, New York 10017 Exhibit 63 Annexed to Stipulation

Letter Dated July 29, 1971 With Copies of

Memorandum of Agreement Between CBS and

Tandem Dated as of July 10, 1970 and an

Amendment Thereto Dated July 21, 1971

(See Opposite)

Coloration to addressing System, Inc. Televier. City 7860 Pleasify Bor Sward Los Angeles, California 60036 (213) Olive 1-2345

Frederick C. Wing, Central Attemoy

RECEIVED

AUG 0 3 1971

ROBERT A. DALY,

Dear Martin:

Re: ALL IN THE FAMILY

Attached please find what I believe is the final revision, ready for execution, of the basic Memorandum of Agreement dated July 10, 1970, and an amendment thereof dated July 21, 1971. These documents now fully reflect the business discussions between Sam Cohn and Don Sipes, and the legal discussions between Anne Nelson and Sheldon Perry and yourself.

I am sending you eight copies of each and I would appreciate your having six of each executed and returned to Anne Nelson for execution by us.

Sincerely,

Martin Perlberger, Esq. Kaplan, Livingston, Goodwin, Berkowitz &Selvin 450 N. Roxbury Drive Beverly Hills, California 90216

July 29, 1971

FCW/ad

Enc.

cc: R. Kaiser

G. Rubin

R. Daly/ A. Nelson

S. Perry S. Cohn

By messenger

Deft. Exh. For ID Plf. Exh. In-Ei Walter Shapiro CSR Doyle Reporting Inc.

TELEVISON NETWORK

A Division of Columbia Broadcarding System, Inc. Television City 7800 this verty Itaalex and Los Angeles, California 50003 (213) Octive 1-2345

July 21, 1971

Tandem Productions, Inc. 1901 Avenue of the Stars Suite 670 Los Angeles, California 90067

RE: ALL IN THE FAMILY

Gentlemen:

Reference is made to the Memorandum of Agreement between us dated as of July 10, 1970.

Said Memorandum of Agreement is hereby amended as follows:

1) Paragraph 4 - As a result of CBS' agreement to include the \$7,500 override in the license fee for new programs effective with the 1971-72 season, the new program prices shall be as follows:

"1st	vear	(1971-72)\$80,000	1
2nd	vear	(1972-73)82,500)
3rd	vear	(1973-74)85,000)
4th	vear	(1974-75))
		(1975-76)90,000	

In addition to the foregoing, CBS shall pay Contractor an additional sum of \$750 per new program produced for the 1971-72 season."

2) Paragraph 14 - Effective with the 1971-72 season, Contractor shall pay actual below-the-line costs on a weekly basis with no \$7,500 override protection inasmuch as the override has been added to the license fee.

Except as modified above, all other terms and conditions of said July 10, 1970 Memorandum of Agreement shall remain in full force and effect and are hereby ratified and confirmed.

Will you please sign in the space provided for below to conform your acceptance hercof.

Very truly yours,

CBS TELEVISION NETWORK a division of Columbia Broadcasting System, Inc.

Ru			
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ACCEPTED AND AGREED:

Tandem Productions, Inc.

R	
Dy	

New York, New York (here Oter called "CBS") and Tendem Oductions, Inc., 1901 Avenue of the Stars, Suite 670, Los Angeles, California 90067 (hereinafter called "Contractor").

- 1) Contractor shall produce and furnish for broadcast over the television facilities of the CBS Television Network a series of one half-hour programs which shall be produced in color, on video tape, entitled ALL IN THE FAMILY. The series essentially will be a topical satire in conformance with material furnished to CBS and it is understood that Contractor will only be approximately two to three weeks ahead of air in order to keep the series topical. Each program will be produced to conform to a program format mutually approved between the parties.
- 2) CBS shall have the right to commence the broadcast of the series in mid-season of the 1970-71 season (in which event CBS must so advise Contractor on or before November 15, 1970) or the fall of 1971.
- 3) The series term shall be $5\frac{1}{2}$ years (in the event the broadcast of the series is commenced mid-season 1970-71) or five years (in the event the broadcast of the series is commenced in the fall of 1971). CBS shall have the right to terminate this agreement effective at the end of any then current broadcast season by written notice to Contractor on or before April 1 of the then current broadcast season. If CBS does not exercise its right of termination, CBS shall have its customary first negotiation rights with respect to continuation of the series and, if the parties fail to reach agreement, first refusal rights for one year thereafter in connection with any third party offers which are equal to or less favorable to Contractor than Contractor's last offer to CBS.
- 4) The programs shall be delivered at the following license fees:

	Per New Program	Per Repeat
Mid-season 1970-71 (if applicable)	\$72,500	\$18,000
1st year (1971-72) 2nd year (1972-73) 3rd year (1973-74) 4th year (1974-75) 5th year (1975-76)	72,500 75,000 77,500 80,000 82,500	18,000 18,750 19,500 20,250 21,000

CBS had advanced the sum of \$109,902.97 against first year license fees and CBS has recouped said advance.

Contractor shall also be entitled to a non-recoupable pre-production fund of up to \$12,000 for accountable and substantiated pre-production expenses.

The above license fees are subject to the customary union, governmental and industry wide increases or decreases effective from and after July 10, 1970.

- 5) The applicable price. Or new program shall be payable a follows:
 two-thirds aron come believe and one-third upon delivery.
 The applicable report fee will be payable within ten days after
 broadcast of the report.
- 6) Commitment:
 - (i) Mid-season 19/9-71 start:

13 new programs; CBS shall have the right to increase its order for new programs on a week to week basis but in no event more than 17 additional new programs.

(ii) Fall 1971-72 start:

13 new programm; CB3 shall have the right to increase its order for new programs on a week to week basis but in no event more than 17 additional new programs.

- (iii) Notwithstanding subdivision (iv) below, in the event CBS commences broadcasting mid-season 1970-71 and does not exercise its right to terminate effective at the end of the 1970-71 season, CBS' minimum commitment for the 1971-72 season will be 13 new programs and CBS shall have the right to increase its order for new programs on a week to make basis but in no event more than 17 additional new programs provided that an aggregate of 22 new programs must be ordered or the termination right exercisable on or before April.

 1, 1972 will be deemed to have been exercised.
- (iv) Subsequent years:

2

16 new program: CBS shall have the right to increase its order for new programs on a week to week basis, but in no event more than 14 additional new programs provided that an aggregate of 22 new programs much be ordered or the termination right exercisable on or before the April 1 of the then current broadcast season will be deemed to have been exercised.

- (v) During each brandcast season for which CBS orders new programs, CBS shall have the right to broadcast repeat programs on an as needed basis.
- (vi) Notification for the ordering of any additional new program(s) beyond the order of the minimum commitment must be given at least three weeks prior to its selectual telecast date.
- 7) The site for production of the series programs shall be California.
- 8) CBS shall have full pring approvals with respect to all key creative elements and of such cast members, if any, who are featured in at least seven programs in the average out of every 13 new programs produced. CBS shall have the

further right to approve of any substitute of any person or element approved by CBS. Jean Stapleton and Carroll O'Connor as leads, Sall-Struthers and Rob Reiner as "Gloria" and "Mike", Michael Evans as "Lionel", and John Rich as Director have been approved, and the services of Stapleton, O'Connor, Struthers, and Reiner in each program hereunder are of the essence of this agreement.

- 9) Contractor warrants and represents that it has the agreement of Herman Lear that Norman Lear will produce and be the headwriter of the series on the following basis:
 - (i) if the series is commenced for a mid-season 1970-71 start, all new programs produced for the 1970-71 season and if the termination right exercisable on or before April 1, 1971 is not exercised for a minimum of the first 13 new programs for the 1971-72 season.
 - (ii) if the series is commenced for a fall 1971-72 start, for all new programs produced for the 1971-72 season.

After the applicable requirements set forth hereinabove in this paragraph have been satisfied, Norman Lear, at his sole election, may choose to render services as only Executive Producer of the series; it being unferred that CBS' creative approval rights as set forth in Paragraph 8 shall be applicable with respect to any person thereafter rendering services at producer and/or stager and/or headwriter. It is understood that the services of Norman Lear as set forth hereinabove are of the essence of this agreement.

- 10) CBS shall reimburse Contractor for the cost (including fringes and embyer contributions and taxes) of the "black family" for each program in which any or all of such "black family" appears, it being understood that:
 - (a) CBS shall have prior approval of the business arrangement for each member of the "black family",
 - (b) No member of the "black family" other than Lionel shall appear in more than 13 episodes in any broadcast season.
- 11) The broadcast area shall be the United States, its territories and primaresions (including Puerto Rico) Bermuda and Antigua. The broadcast area may be extended to include Canada (pre-release or otherwise) to accommente a sale by CBS to an advertiser(s). With respect to broadcasts of the grams in Canada pursuant to the previous sentence, Contractor shall remark 60% and CBS shall receive 40% of the networfits from such Canadian broadcasts without deduction of any distribution fee, but minus actual out-in-pocket costs.

^{*}actual out-of-pocket

^{**}program

- fee. CBS shall be entitled to receive 15% of net profits from merchandising after the deduction of the aforesaid merchandising fee which includes standard costs and expenses of merchandising. CBS shall have all syndication and distribution rights to the programs, to the extent that Contractor shall secure the same, at CBS' standard distribution fees (40% foreign, 40% domestic station-by-station, 25% domestic regions 10% domestic network) and CBS shall pay Contractor all net profits derived therefrom after deduction of said distribution fees and all distribution expenses. Contractor warrants and represents that as of this date, it has secured syndication and distribution rights in the United States, its territories and possessions (including Puerto Rico), Bermuda, Antigua, Canada, Great Britain and West Germany, on free television (including cable television not constituting "pay-TV"). Contractor will use its best efforts to secure additional syndication and distribution areas and CBS will reimburse Contractor for its expenses in securing same, up to a maximum of \$16,000. Contractor will constantly advise CBS of its progress in securing any such additional area(s).
- 13) CBS shall have its customary first negotiation/first refusal rights with respect to any spin-off from and stripping of this series.
- 14) The parties have negotiated the terms and conditions for Contractor's use of CBS' California below-the-line facilities in connection with the production of the series. The below-the-line facilities rates to be charged for each year, priced at CBS' standard rates are set forth in Exhibit A attached hereto, and to that extent, the below-the-line elements ordered by Contractor at the applicable rates are included in the package price for new programs specified in Faragraph 4 hereof. It is understood that Contractor shall be "protected" with respect to such below-theline rates for the life of this agreement. (It is understood that CBS shall accept as an allowable below-the-line charge the sum of \$500 against rent, offices, etc.). In the event that the average below-the-line charges .-for the applicable contract year exceed the amount of \$22,500 multiplied by the number of new programs produced during such contract year, CES agrees to absorb such excess up to an average of \$7,500 per program so produced. Any excess above the amount specified above shall be borne by Contractor with no right of reimbursement or recoupment whatsoever. The parties intend to enter into a formal agreement for the use of such facilities.
- 15) Any cost of re-editing new programs for purposes of repeating the same hereunder shall be borne by Contractor.
- 16) As used herein, "network broadcast" means a broadcast, transmission and exhibition by means of simultaneously interconnected television devices, methods and improvements, now or hereafter known, without limitation; a network broadcast includes delayed broadcasts made not later than 60 days after such simultaneous broadcast, transmission and/or exhibition over any facilities that shall not have been used therefor, although ordered therefor or normally used in connection with similar broadcasts, transmissions, and/or exhibitions; the television devices, methods and improvements referred to herein include, but are not limited to, so-called "booster" and "translator" stations and relay systems, as well as antenna systems which

receive and retransm Or redistribute (with or with O complification).
television signals by wire or cable connection or otherwise to television receiving sets.

- 17) Contractor shall use reasonable efforts to secure from major performing talent that they will be available to perform lead-ins and lead-outs to commercials and commercials themselves during production periods for the work sponsors at no additional expenses to CBS or the sponsor(s).
- 18) (a) The ALL IN THE FAMILY (as distinguished from TILL DEATH DO US PART property, the series, the programs and all elements thereof shall be exclusive to CBS in television, radio and feature films from the little hereof until the expiration of the term of this Agreement within the broadcast area. The program series TILL DEATH DO US PART will not be exhibited on television in the broadcast area during the term hereof. For the purpose hereinabove set forth, Canada shall be deemed to be part of the broadcast area.
 - (b) Notwithstanding anything to the contrary set forth herein, it is understood and agreed that Norman Lear, the writers and John Rich and minor performing talent are not exclusive to the series. Further, the featured cast members will each be allowed to make three guest appearances during each 13 week cycle subject to granting time period and major sponsor protection.
- 19) (a) The parties hereto recognize that the concept of the program series represents an attempt at a new departure in conventional American television entertainment in that the comic premise of the program series is the satisfaction of political attitudes. Each program, however, shall comply with all CBS Program Practices policies and standards and CBS may require Contractor to make such changes in the script for any program or any material contained in any program or to edit any completed program as may be necessary to secure compliance with such policies and standards.
 - (b) In furtherance of CBS' rights pursuant to subparagraph (a) of this paragraph 19 and in order to fulfill the purpose of the program series as set forth in said subparagraph (a), Contractor warrants that neither the series nor any program therein shall become or be what would be considered the television equivalent of a tract on behalf of any litical ideology or viewpoint, and that the range of political attitudes satirized in the program series shall be sufficiently varied so that the series does not become identified with any particular ideology reviewpoint.

CBS hereby acknowledges that it took delivery of the first thirteen programs in the series as acceptable for broadcast and that CBS and not hereafter claim that Contractor was in breach of its obligations in respect to those programs; provided, however, that CBS reserves the rights, should the need arise in CBS' opinion, to require Contractor to correct any imbalance in or respecting any one or more of these

programs in connection with their future use, the same to be done at CBS' expense; and provided further that CBS retains the right to require Contractor to correct any overall imbalance in those first thirteen programs by appropriate adjustments in program material in subsequent programs in the series.

- 20) CBS may assign its rights hereunder in full or in part to any person, firm or corporation provided, however, that no such assignment shall relieve CBS of its obligations hereunder.
- 21) The parties intend that mutually agreeable provisions customary in agreements of this nature, including, but not limited to, those covering additional warranties, indemnities, name and likeness, pay-or-play, morals, insurance, force majeure and breach, shall be applicable to this Memorandum of Agreement. The details of such provisions shall, together with the provisions hereof, be incorporated into a more formal agreement which, when executed, shall replace this Memorandum of Agreement. In addition, CBS' standard contract provision in respect of package supplier's compliance with Section 508 of the Federal Communications Act shall be applicable to this Memorandum of Agreement and shall be incorporated in the said more formal agreement.

CBS TELEVISION NETWORK
A division of Columbia
Broadcasting System, Inc.

ACCEPTED AND AGREED		
TANDEM PRODUCTIONS,	INC.	
Ву		 • • • •

Below-the-line facilities rates

TECHNICAL SERVICES	TINU	RATE
Telecine Projector	Hour	\$100.00
VT Playback/Record/Edit	Hour	85.00
Inhouse Camera*	Day	300.00
Four Track Audio*	Hour	30.00
Orchestra Pre-Record/Balance*	Hour	25.00
Vidco Tape Stock Sold	Hour	255.00
Video Tape Stock Returned	Hour	200.00 cr.
Technician	Hour	17.00
Sound Effects Man	Hour	20.00
FILM SERVICES		
Projection Room	Hour	15.00
Film Editor	Hour	15.00
STUDIOS AND SHOPS		
Studio Operation	Hour	250.00
Studio Set/Strike	Hour	125.00
Control Room	Hour	30.00
Rehearsal Hall	Hour	20.00
Stagehand	Hour	8.00
Electric Shop Man	Hour	12.00
Make-Up/Hairdresser	Hour	11.00
Stage Manager	Hour	12.00
Lighting Director	Hour	15.00
Carpenter	Hour .	11.00
Scenic Artist	Hour	11.00
Wardrobe Handler	Hour	9.00
Set Decorator	Hour	11.00
Special Effects Man	Hour	12.00
Graphic Artist	Hour	14.00
Draper	Hour	11.00
Prop Handler	Hour	8.00

^{*}Rate does not include manpower.

As of July 10, 1970

CBS Television Network A division of Columbia Broadcasting System, Inc. 51 West 52nd Street New York, New York 10019

Gentlemen:

You have entered into an agreement dated July 10, 1970 with Tandem Productions, Inc. (Contractor) pursuant to which Contractor agreed to furnish to you my services in a program series presently entitled ALL IN THE FAMILY.

In consideration of your entering into said Agreement, I acknowledge that I have carefully examined said Agreement. I agree that insofar as the same provides for the performance of services by me and the imposition of duties and obligations upon me, I will faithfully perform all of the same to the best of my ability and to the same extent as though I had entered into an agreement directly with you, in which I agreed to perform such services, and assumed such obligations and duties. I acknowledge that you would not have entered into the Agreement but for the execution of this agreement by me.

Very truly yours,

Norman Lear

Exhibit 64A-1 Annex d to Stipulation Proposed Side Letter Between CBS and Tandem Dated August 26, 1971

(See Opposite 😭)

1052.15

Mrs. Anno Melson Business Affairs CDS Tolevision Metwork 7800 Becerly Boulevard Los Angeles, California

Rs: Tandem Productions, Inc. "ALL IN THE FAMILY" - CDS Agreement

Dear its. Melson:

In accordance with our conversation, I am enclosing six copies of each of the following documents relating to this matter:

- 1. Memorandum of Agraement, dated July 10, 1970, between CDS Tolevision Natwork and Tondem Productions, Inc., and supplemental latter from Morman Lear to CDS Tolevision Network also dated July 10, 1970, which documents have been signed by Tandem Productions and Mr. Lear respectively.
- 2. Amendment dated July 21, 1971 to the above Memorandum of Agreement, which has also been signed by Tandem.
- 3. Supplemental letter from CDS Television Network to Tandem Productions, dated August 26, 1971, referring to the separate agreements to be entered into with Viscon with respect to syndication and distribution rights in the series. The purpose of this supple wotal letter is, of course, to prevent any conflict between the provisions of Paragraph 12 of the Merorandum of Agreement and the syndication and distribution arrangements being worked our with Viscom with CDS' knowledge and consent.

Will you please have all copies of the enclosures signed by CDS Television Network, and return to us at least three copies

PLAINTIFF EXT.

NO. 64A-1 FOR IDENT.
HEN HYATT, NUTARY PUBLIC

LOAF 8/247

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of the Recommiss of Agreement and amendment dated July 21, 1371, and all regist of the supplemental latter referred to in Paragraph 3, which is will then here signed by Tandem.

Very truly yours,

Baldon R. Harrison

Encls.

cc: Norman Last

Bud Yorkin

J. William Hayes

Nartin Porlhorger

(all w/copy of item 3)

Exhibit 171 Annexed to Stipulation Revised Version of August 26, 1971 Side Letter Dated September 15, 1971

(See Opposite 😭)

1052.15.11

CBS TELEVISION NETWORK

A Division of Columbia Education System, Inc Television City 7620 Deverty Educated Los Angoles, California 50036 (213) OLive 1 2246

September 15, 1971

Dear Martin:

Enclosed are 5 copies of the Side Letter as re-drafted by the CBS Law Department concerning the agreement between Tandem and Viacom with respect to syndication on "All In The Family". If you find these in order, please have them executed on behalf of Tandem and return them to us for signature.

I am holding up distribution of the fully executed documents of the basic agreement and amendment until this is signed. Thank you.

Sincerely,

Anne Nelson Business Affairs

Martin Perlberger, Esq. Kaplan, Livingston, Goodwin, Berkowitz and Selvin 450 North Rembury Drive

Beverly Hills, California 90210

Enclosures

PLAINTIFE NO. 171

FYY'BIT FOR IDENT.

MAROLD M. LEIBOVITZ, N. P.

8/23/23

August 26, 1971

Tandem Productions, Inc.
1901 Avenue of the Stars
Los Angeles, California 90067

RE: ALL IN THE FAMILY

Gentlemen:

Reference is made to the Memorandum of Agreement dated July 10, 1970 (herein referred to as the "CBS Agreement") between you and the undersigned, CBS Television Network, a division of Columbia Broadcasting System, Inc. (herein referred to as "we", "us" or the equivalent), relating to the television series entitled ALL IN THE FAMILY.

Notwithstanding anything contained in Paragraph 12 or any other provisions of the CBS Agreement with respect to syndication and distribution rights in and to the programs of the said series, we hereby consent to and approve of your entering into a separate agreement or agreements with Viacom International, Inc. and/or its subsidiaries or affiliates (herein referred to for convenience as "Viacom"), providing for the exercise and/or exploitation of such syndication and distribution rights, which separate agreement or agreements will be deemed to supersede and replace the provisions of Paragraph 12 and any other provisions of the CBS Agreement with respect to syndication and distribution rights at such time as such agreement with Viacom is finalized. You will notify us in writing as to the effective date of any such agreement or agreements. Notwithstanding anything to the contrary contained hereinabove, CBS' right to receive 15% of net profits from merchandising shall be unaffected as a result of the foregoing.

Any such agreement or agreements between you and Viacom may provide for the exercise or exploitation of such rights in such countries and territories, and on such terms and conditions, as may be agreed upon between you and Viacom, but no such agreement between you and Viacom shall authorize or permit the syndication and/or distribution of ALL IN THE FAMILY during the term of the CBS Agreement in the "broadcast area" as defined in the CBS Agreement. In the event that in any year of the CBS Agreement Viacom exercises syndication and/or distribution rights in Canada (because Canada is not in such year included in the "broadcast area") no broadcast of ALL in the FAMILY may be made in Windsor, Ontario, Canada. /You agree that any such agreement relating to the exercise or exploitation of/syndication and/or distribution rights in Canada will specifically provide that if we shall exercise our rights under the CBS Agreement to extend the broadcast

area to include Canada, then none of the programs of the series will

be licensed or sold by you or any distributor or licensee for broadcast

and/or exhibition in Canada on any basis in the coverage area of any

television market in which the series is then being telecast (or is

scheduled to be talecast) on a network basis pursuant to the CBS Agreement.

Except as herein provided, the CBS Agreement is not otherwise modified or amended. Your signature hereto will constitute this a binding agreement between you and us.

. Very truly yours,

CBS TELEVISION NETWORK
A division of Columbia
Broadcasting System, Inc.

By 15 That Culm

ACCEPTED AND AGREED:

TANDEM PRODUCTIONS, INC.

By 15/ Alan Marken

C:

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you or ;

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Exhibit 172 Annexed to Stipulation Letter Dated September 22, 1971

(See Opposite 😭)

1052.15

Mrs. Anno Nolson CDC Tolovision 7800 Deverly Doulovard Los Angolos, California, 90035

RO: "ALL IN THE FAMILY"

Dear Anno:

In accordance with your letter of September 15, 1971 we return to you herewith five copies of your redrafted side letter amounted on behalf of Tandam Productions, Inc.

please have the enclosures executed on behalf of C3S and return to me at least three fully-executed copies, together with three fully-executed copies of the Memorandum Agraement and amendment.

Sincoroly.

Martin Perlborger

MP/jp enclosures

bcc: Bud Yorkin Norman Lear J. William Hayes, Esq.

PLAINTIFF FOR IDENT.

NO. /7 2/
HAROLD M. LEIBOVITZ, N. P.

8/13/

Exhibit 173 Annexed to Stipulation Letter Dated September 30, 1971

(See Opposite 😭)

CBS (TELEVISION NETWORK

A Drugger of Outumble Control of Cystem 1
Telectron City
7810 Bloom February
Los Angeles Colored 20016
(cft. Outubble)

1052.15

September 30, 1971

Dear Martin:

Enclosed herewith are executed copies of the following:

A contract with Tandem dated July 10, 1970 for "ALL IN THE FAMILY"

An Amendment to that contract dated July 21, 1971.

A side letter to the contract dated August 26, 1971.

These copies are for your files.

Sincerely,

Anne Nelson

Business Affairs

Mr. Martin Perlberger Kaplan, Livingston, Berkowitz, Goodwin & Silven 450 North Roxbury Drive Beverly Hills, California 90210

Enclosures

PLAINTIFE EXHIBIT NO. 173 FOR IDENT. HAROLD M. LEIBOVITZ, N. P.

5/13/13

TRIAL, SEPTEMBER 18, 1973 (Transcript, pages 163-165, 165a, 166-167)

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DONALD SIPES, called as a witness, having been previously sworn, resumes.

THE CLERK: You are reminded that your are still under oath.

THE WITHESS: Yes, sir.

CROSS EXAMINATION

BY MR. GOULD: (Continued)

Q Mr. Sipes, yesterday do you remember being asked this question on page--it says MP 11 up in the left-hand corner.

It is marked on my copy MP 11, and it is page 121;

121 is in the right-hand corner, your Honor. It doesn't

appear on mine but that's what it is.

Do you remember the Court asking you this question:

"The Court: Well; let me ask you, was there, ever
a discussion, an oral discussion between you and anybody
on the other side with respect to an assignment clause?

"The Witness: During the making of the deal, your Honor? No, sir.

"The Court: Or at any point up until the final execution of the last agreement.

"The Court" --

I think it should be the witness.

THE COURT: It is the witness, yes.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE

Mr. Mayes and Mr. Cohn have done business with us for years and this is what we considered to be boiler plate and not a basic deal matter."

Do you remember giving those answers to his Fonor's questions?

A Well, I do remember giving the answars, asking the question as to whether the time frame we are talking about was during the negotiations.

During the regotiations the answer was no. As I later testified I had a conversation on the telephone with Mr. Hayes about that but this was some time thereafter.

Q So Mr. Sipes when you responded to his Honor's question as it says here, that there was no conversation on the assignment clause at any point up until the final execution of the last agreement, that was a mistake?

A I would think so. The only--yes, I would think that would be a mistake if that's what it says in this question.

- Q Indead you did have a conversation, did you not--
- A Yes, I testified to it yesterday, did I not?
- Conversation about the assignment clause prior to the final execution of the contract.

A

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THE RESIDENCE AND ADDRESS.		4 3 5 6 3 4	

- can you tell us now when that was that you had
- hazy on the time. I thought it was the spring of 1971. It was either the spring of 1971 or the summer of 1971 but that's about as far as I can pinpoint it for you.
- Q And am I correct that the one with whom you had this discussion was Mr. Hayes?
 - A Yes.
- Anybody else with whom you discussed it?

 MR. FEARSALL: Objection, your Monor, unless we have the definition of what this is that is being discussed.

 THE COURT: Overruled. You may answer.
 - Q You understand my question, do you not, Mr. Sipes?
- A Yes. When you say anyone, I may very well have had a conversation with Business Affairs Department people.

 I am not sure, I don't remember.
- Q We just want your recollection, sim. Do you remember a conversation on this subject with anybody other than Mr. Hayes? By this subject, I mean the assignment clause.
 - A I really can't recall, Mr. Gould.
 - Q Mr. Sipes, did you not discuss it with anybody at

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Viacom.

A As I say, I must have but I really cannot recall.

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Q I think you said that when you discussed with Mr.

Hayes you asked him what's this nonsense about the assignment

clause, or something like that, right?

A Yes.

What was your understanding of the problem, if any, with respect to the assignment clause?

A Well, my understanding was that a question had been raised by one of the attorneys for Tandem with business affairs people on the West Coast regarding our assignment clause, regarding the wording of the assignment clause.

That is about as much as I can remember.

Q Did you know what the question was? Did anybody tell you what the question was?

A Well, it is very hard for me to recollect now what the conversations I had were. As far as I can recall, I was told that there was a problem with the assignment clause with one of the lawyers for Tandem, with Business Affairs people on the Coast.

This had taken place after we had picked the show up for the following fall. And I couldn't understand why there was a problem, because I thought, and I so considered, that we had our normal assignment clause. We never had any problem with this before, it had never been raised before.

THE COURT: Let me ask you this, Mr. Sipes, and

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this is the only thing I am interested in at the moment: Was this conversation with Hayes before or after Viacom came into being?

Sir, it is my recollection that it was after "Viacota came into being.

THE COURT: Then I don't understand why you say you couldn't understand the problem. They had made a clause which in normal event would never result in an actual assignment unless CBS went under or something happened.

No, sir. What I was trying to say, I think, was I couldn't understand why there was a problem about the assignment clause when we had done business with these peopl over and over again, this is what we considered to be boilerplate, and I had never had any problem about this assignment clause before with these people.

Other matters--

THE COURT: But you had never assigned actually under the assignment clause, had you?

No. That's why, as I say, my recollection would be that it was after Viacom, yes, sir; also because then we talked about their being a conversation between Viacom and Tandem.

- Mr. Sipes, who was Miss Nelson?
- Miss Nelson is a negotiator in the Business Affairs

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TRIAL, SEPTEMBER 18, 1973 (Transcript, page 182)

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Was the subject of your continuing obligation mentioned at all at all in your conversation with Hayes?

- Not that I can recall, Mr. Gould.
- In the conversations with Mr. Hayes, did you suggest that the Tandem people meet with Viacom?
- A I can't remember how that evolved, whether I suggested it to Bill or it just grew out of our conversation with Mr. Hayes, but there was some conversation -- I can't remember if that was the same telephone conversation or another one we had, but that we talked about why doesn't Tandem and Viacom get together and make their own Jeal, that would be all right with me, as long as I had my protections.
- Am I not right, sir, that at this time in the relations between Tandem and CBS, you knew that Tandem was unhappy about the assignment clause, correct? They told you that.
 - They told me that, yes.

THE COURT: At which time, Mr. Gould?

MR. GOULD: I mean June, July and up to August 26th of 1971.

MR. PEARSALL: I am going to object, your Honor. I don't believe that is the time sequence that's been established here --

TRIAL, SEPTEMBER 18, 1973 (Transcript, page 189)

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Q In the discussion or discussions that you had with Hayes, did not Mr. Hayes explain to you the precise nature of his concern or of Tandem's concern over the assignment clause?

- I don't recall any such conversation, Mr. Gould.
- You did see, did you not, Exhibit 67, the August 26th letter (handing to witness)?
 - Yes, sir.
- And before the letter, as I understand it, you had a conversation in which either you urged Hayes or Hayes suggested somewhere in the conversation they develop the idea of Tandem talking directly to Viacom, correct?
 - Correct.
- And you said anything that he does, in effect you said anything he does with Viacom, that Tandem does with Viacom would be all right with you fellows?
 - Subject to our protections, yes.
- Didn't he explain to you what it was that he wanted to talk with Viacom about?
 - Not that I can particularly recall, Mr. Gould, no.
- In other words, it is your testimony now that you didn't know what the "problem" was between Tandem and Viacom, you didn't know snything about it, but that you told

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production money. So --

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BY MR. GOULD:

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But not at this meeting?

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Oh, I think it might have been at this meeting, Mr. Gould. I think so. I am not sure. That I gave them ten to twelve thousand dollars in reproduction moneys.

Later on during the negotiation I gave them some pre-

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Anything else on this that is wrong, to adopt his Honor's inquiry?

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A I think there was some other point where a date was wrong. I think on page 1, the fall of 1973 I don't understand, down towards the bottom. That I think should be 1972.

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On the third page, sir, where it says there "Don says," and then this line down the side; is that right? Did you say those things?

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THE COURT: Including what is crossed out, you mean?

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MR. GOULD: Yes, sir.

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Including what is crossed out? A

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Q Yes.

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Well, again the stuff that was crossed out --I remember there was some conversation, some give and take, about the hold money for Mr. Lear. I know that what is on

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TRIAL, SEPTEMBER 18, 1973 (Transcript, pages 199-200)

and the other parties.

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TRIAL, SEPTEMBER 18, 1973 (Transcript, page 203)

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that, did you not?

- A Yes. I am listed here as a recipient.
- Q And aid you see it?
- A I can't recall, but -- I can't recall. It must have crossed my desk.
 - Q In the normal course of business?
- A In the normal couse of business it would cross my desk.

BY THE COURT:

- Q I want to orient myself. When was the first showing of A 1 In The Family on the CBS network?
- A That was, I think, January 12, 1971. I may be off a few days.
 - MR. PEARSALL: We will stipulate, your Honor.
 - A January 1971, your Honor.
- MR. COULD: In January, it is stipplated, it started in January.
 - I offer Exhibit 59.
 - MR. PEARSALL: No objection.
- (Defendants' Exhibit 59 received in evidence.)

BY MR. GOULD:

- Q Mr. Sipes, did anyone ever tell you that Viscom and Tandem had made some deal or arrangement?
 - MR. PEARSALL: Objection, your Honom.

TRIAL, SEPTEMBER 18, 1973 (Transcript, pages 214-215)

TIE COURT: You may continue.

'IR. PIERSALL: Thank you.

I show you plaintiff's Exhibit 575, Mr.

Sekerak's notes which Mr. Gould was showing you a little earlier. I direct your attention to the bottom of the second page, lower left-hand corner, where it says, "We take off syndication -- standard distribution fees and costs. They get 100 percent of the prfits." Do you see that?

A. Yes.

MR. GOULD: "They get all," it says, doesn't it?

THE WITHESS: Get all 100 percent of the parfits.

MR. GOULD: _Right.

THE WITNESS: It says both.

- At that meeting on June 24th, did any of the Tandem representatives indicate their assent to that understanding?
- A As far as I can recall from that meeting, yes, that was the understanding. They assented to it.
- Q. What were the CBS standard distribution fees on June 24, 1970?
- A. They were forty percent for domestic, forty percent for foreign, 25 percent for a regional sale, and ten percent for a network sale.
 - Q You have been involved in a good number of

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the basis of oral agreements?

the show is off the air.

Yes.

THE COURT: I will allow it.

MR. GOULD: Same objection.

THE COURT: Same ruling.

Yes.

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Sipes - redirect

The list is nu-merous, your Honor.

THE COURT: Yes, all right.

In the course of the preliminary discussions that you had with Mr. Cohn prior to this June 24, 1970 meeting that you testified about, did Mr. Cohn tell you whether ornot Tandem had given to ABC the syndication rights in All In The FAmily in that agreement?

A May I have the question again, please? I am sorry, I didn't hear it.

Q Did Mr. Cohn tell you whether or not Tandem had given syndication rights in All In The Family to ABC in their deal with ABC?

MR. GOULD: I object to this, your Honor. What difference does it make?

THE COURT: Yes, I sustain the objection.

Q In theindustry, Mr. Sipes, is there any customary practice as to theduration for which a network would acquire syndication rights?

A I take it by syndication rights you mean in particular programs?

Q In episodes that would be broadcast over the network.

A If I may ask you, you are talking about if I have the syndication rights in a series?

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A. What is the duration of the term in which I would

have syndication rights on those episodes of that series?

Q Yes, during which you can exercise syndication rights in those episodes?

MR. GOULD: Your HOnor, I understood the question to be whethere there is animdustry practice, and we are getting a little away from that now.

THE COURT: I understand. The thing that bothers
me is that all counsel and I seem to use "syndication" rights.
What we are talking about is really distribution rights.

THE WITNESS: Yes, sir.

THE COURT: In syndication.

THE WITNESS: That's correct, your Honor.

MR. GOULD: Thatis what they call it.

THE COURT: That is what is so confusing about the thing, because if you analyze it, CBS doesn't get a right.

They have a service to perform. The rights remain in the packager, as I understand it.

MR. PIERSALL: I think that is perfectly correct, your Honor.

THE COURT: Let's try to ask questions that way.

. MR. PIERSALL: It's a shorthand term that has somehow developed.

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THE COURT: It's a shorthand term that is wrong.

MR. PIERSALL: All right.

THE COURT: Am I right about that, Mr. Sipes?

THE WITNESS: Yes, sir, it's a jargon that we use

in our own business.

THE COURT: But in a lawsuit, it ought to be clarified.

All right. Now to get back then, Mr. Sipes, is there an industry practice that you know of as to the duration in which a netork can exercise the right to distribute in syndication in those situations where it has obtained under its agreements syndication rights?

A In those particular episodes, that would fall under your arrangement, it is my understanding that the industry practice is that it's in perpetuity.

MR. GOULD: I have to move to strike it out, your Honor. I don't think it has any probative value in this case.

MR. PIERSALL: I think it's got a great deal.

THE COURT: It may eventually. It's not that important. I will leave it in and then you can address yourself to it if you find it painful.

MR. GOULD: Painful it isn't.

THE COURT: I don't think it's painful so leave it.

MR. PIERSALL: Mr. Gould, would you be willing to

TRIAL, SEPTEMBER 18, 1973 (Transcript, pages 224-226)

THE COURT: You will have to show me the document so can pass on it.

(Document handed to the Court.)

THE COURT: Which document are you asking about?

MR. PIERSALL: Exhibit 18. I am asking him whether subsequent to the CBS response, which is Exhibit 18, second page, whether the witness knew at that point of any open point that remained unresolved.

THE COURT: I will allow it.

A Not that I can recall.

THE COURT: I suppose that what you are trying to prove is circumstantially that a failure to raise a particular point or to press a particular point is a withdrawal of the point and it is in aid of the integrated language of the document. Is that what you are trying to do?

MR. PIERSALL: Your Honor, that plus the fact that quite apart from the later written agreement, we believe that the sequence of documents here constitute a contract in writing in the fall of 1970 which was acquiesced in and accepted by Tandem both by its performance under the agreement and by its acceptance of benefits. In other words, your Honor, we have a series of positions here with respect to this agreement.

THE COURT: I know, and you also tried to and care

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MR. GOULD: To use a clicke, I didn't want my silence to indicate that I concure in the view or anything.

THE COURT: All right, you will be noted as in dis-

MR. GOULD: I dissent.

Prior to the completion of the broadcast

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MR. GOULD: I object to the question.

TRIAL, SEPTEMBER 18, 1973 (Transcript, pages 240-262)

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WILLARD BLOCK, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEARSALL:

- Q Mr. Block, by whom are you employed?
- A Viacom Enterprises. Viacom Enterprises is a division of Viacom International.
 - Q You will have to speak to the Judge.

MR. PEARSALT: I might say, your Honor, Mr. Block has a throat ailment at the moment which is impairing his ability to speak up.

If you can't hear the witness, I would appreciate your indicating and I will caution him to speak up as much as he can.

Actually it might be a better bet -- this is just a thought -- if the witness were closer to you.

THE COURT: Let me see how it goes. I don't want to catch a cold. Go ahead.

- Q Is Viacom Enterprises an independent company?
- A It is a division of Viacom International, Inc.
- Q In what capacity are you so employed?
- A I am president of Viacom Enterprises.

THE COURT: President of Viacom Enterprises?

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THE	WITNESS:	Yes.	sir.
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- Q How long have you been president of Viacom Enterprises?
 - A Since February of 1972.
- Q Prior to that, Mr. Block, did you have any other position with Viacom Enterprises?
- A Yes, in March of 1971, I was appointed vice president and general manager of Viacom Enterprises.
- Q And you continued in that position until you became president?
 - A Yes, sir.
- Q Was that position an active position, that is to say, the position of vice president and general manager of Viscom Enterprises, was that an active position with Viacom during that entire period from March 1, 1971 through February 1972?
- A It was an inactive position until June 4, when Viscom became a company engaging in business in its own name, and thereafter from June 4th until my appointment as president, it was an active position.

MR. GOULD: That is June 4, 1971?

THE WITNESS: Yes, sir.

Q Is that the date of the spin-off of Viacom from CBS?

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A Yes, sir.

Q Prior to Viacom's spin-off from CBS, did you have a position with any other organization?

A Yes, I had been employed for many years by CBS
Enterprises, which was an active corporation until the date
of -- an active subsidiary of CBS until the date of
spin-off, and I had been appointed -- I was vice president
and general manager effective until June 4.

Prior to March of 1971, I was vice president,
International Sales for CBS Enterprises.

Q Let's see if we can get that straight then. From March of --

THE COURT: I have it straight.

MR. PEARSALL: You have it straight?

THE COURT: Yes. I did want to ask one thing.

Who owned Viacom before June 4, 1971, from March to June?

THE WITNESS: Well, Viacom was a wholly owned subsidiary of CBS. It was, I believe, incorporated in August of 1970 as a subsidiary of CBS.

THE COURT: All right. That is all I wanted to get.

- Q Can you describe what CBS Enterprises' business was?
 - A The business of CBS Enterprises was essentially

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the exploitation of ancillary rights to television programs, funiamentally international and domestic syndication.

- When you say syndication, what do you mean?
- In the United States, we mean the licensing of television programs for broadcast to stations on a market-by-market basis as opposed to an electronic distribution which takes place when a network feeds a program.

Internationally, we mean the licensing of television programs to broadcasters in countries throughout the world.

- Countries throughout the world? Q
- Countries, territories, yes, sir.

THE COURT: Including foreign networks?

THE WITNESS: Including foreign networks, yes. In some cases they will be individual television stations; in other cases, they will be networks.

- Would you give us a description of the operations of CBS Enterprises, what its functions were, how it operated?
- CBS Enterprises was a broadly based distribution organization engaged in world-wide syndication of television programs.

We had sales offices in the United States, in, I believe, six cities at time of spin-off, and in nine or

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ten offices outside the United States. These offices, primarly sales offices, handled the normal backroom activities as well.

THE COURT: Did you take over these offices after the spin-off?

THE WITNESS: Yes, sir. All of the offices, all of the personnel that had been engaged in the syndication activities, domestic and international, for the most part came to Viacom and to Viacom Enterprises.

- Q That was on the occasion of the spin-off?
- A That's right.
- Q We have spoken of the term "spin-off." Can you tell us what actually happened by way of a spin-off?
- A Well, the spin-off took place on June 4, 1971, but as of December 31, 1970.
 - Q Why was that?
- A There was -- the spin-off was to have taken place on December 31, 1970, but there was a last-minute stay on the part of the FCC because of some matters that they still had under consideration.

These matters were ultimately resolved and they approved the spin-off on June 4th. The capital stock of Viacom was turned over to CBS in return for various assets that CBS gave to Viacom, and the stock, in turn, was

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THE COURT: In other words, you sell to a wholesaler who --

THE WITNESS: No, you might sell, for example, to an advertiser who in turn would have the option of placing it either on a network or form his own netowrk by syndicating it, lining up time on individual stations.

Q Did there come a time, Mr. Block, when you heard of a program called All in the Family?

A Yes, sir. I first heard of All in the Family in the fall of 1970.

Q In what connection did you hear of it?

A Well, I had heard that CBS was planning to put

All in the Family on the air in January. I heard that they

had acquired the foreign distribution rights.

MR. GOULD: If your Honor please, I will object to this and move to strike it out. I didn't know we were going to get it back in that form.

THE COURT: It is preliminary. I don't think it can hurt anybody.

MR. GOULD: Well, I think we are entitled to know whom he talked with and what was --

THE COURT: You are entitled to strike it out if you insist on it. I just don't know why you insist, but that's all right with me, strike it out.

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MR. GOULD: Cartainly not to waste time.

THE COURT: Strike it out. One wastes more time striking it out than letting it in preliminarily. Strike it out.

BY MR. PEARSALL:

Q Did you have any conversations with anyone at CBS in connection with --

THE COURT: What difference does it make whether he had conversations? Get to the point.

Q When you first heard about All in the Family, did you take any action with respect to it?

A Yes. We had interest in -- on the part of the BBC in acquiring --

THE COURT: Who is "we"?

THE WITNESS: CBS Enterprises.

THE COURT: Try to use that in the locution because we will get confused otherwise.

THE WITNESS: Fine. CBS Enterprises had interest in the -- on the part of BBC in acquiring the broadcast rights for the United Kingdom.

The series, as you know, was based on an English series Till Debt. Us Do Part, which had been broadcast over the BBC and the BBC was interested in having a look at the American version to see whether they might not wish

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to troadcast it.

We had the foreign distribution rights, and I entered into discussions particularly with a Gunmar Ruggheimer, who was the head of purchasing for the BBC, in the fall in our offices in New York.

Q Had you taken any action with respect to Mr. Rugcheimer with respect to All in the Family?

A Yes, I secured -- Mr. Ruggheimer was in New York in the fall. I secured a copy of the pilot that had been produced for -- by ABC. I showed him that pilot, indicated I understood there were some changes to be made; then set up neetings for him to visit some other CBS securities on the West Coast who would be more familiar with the changes.

I informed our sales office in London of the BBC interest, and asked that they appropriately follow-up with Rugoheimer when he returned.

Q Did you take any action with respect to the question of foreign clearance?

THE COURT: With reference to what?

- Q Foreign clearance in England for this possible sale to BBC.
- A Yes, in connection with the rights that we had acquired, I understood that --

MR. GOULD: I move to strike that cut, your Honor.

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THE COURT: It will not affect my mind nor will it affect the Court of Appeals but if you insist, I will strike it out.

Q Let's just take it a step at a time then, Mr. Block.

THE COURT: What?

MR. PEARSALL: I am going to take it a step at a time with Mr. Block.

Q Did you ask anyone to do anything with respect to obtaining foreign clearance for this program?

A Yes. I contacted the Business Affairs

Department. I would have talked with Elsie Wellman, Bob

Daly, in particular, requesting that they give us an

official clearance, first that they secure the rights and

give us an official clearance to proceed with the pending

sale to BBC.

Q What did you understand at that time the matter of clearance to mean in relation to All in the Pamily?

MR. GOULD: I object to that.

THE COURT: Sustained.

Q Was there a problem with respect to foreign clearances of All in the Family, to your knowledge, at that time?

A Yes, I understood that the packager had not at

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the outset acquired all of the broadcast rights in all of the territories outside of the United States.

THE COURT: When you say "packager," you mean Tandem?

THE WITNESS: I mean Tandem, yes, sir.

And it was -- I understood that the Business

Affairs Department would be in touch with Tandem or

Tandem's representatives to try and get them to secure

such rights because we were told that they had a

responsibility and would in fact be attempting to secure
the rights on our behalf.

Q Did you in fact receive communication in due course from the network as to a clearance with respect to All in the Family in England?

A Yes, I did.

I show you Plaintiff's Exhibit 22 for identification and ask you whether or not that is the notification which you received from -- when I say "you" I mean CBS Enterprises and you personally received from CBS with respect to the BBC sale.

A Yes, Mr. Pearsall, this is a memorandum from Mr. Perry to myself advising that we could proceed with our pending sale to BBC.

Now, at or about that time --

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THE COURT: You are not offering it in evidence or is it in evidence?

MR. PEARSALL: It is in evidence, your Honor.

THE COURT: I'd like to see it, then.

MR. PEARSALL: Pardon me.

THE COURT: You said 22 for identification.

MR. PEARSALL: I'm sorry, I neglected to mention that it was in evidence (handing to the Court.)

BY MR. PEARSALL:

Q At or about that same time, did you receive a further notification from the network with respect to the communcement of foreign syndication generally with respect to All in the Family?

A Yes, I did.

Q I show you Plaintiff's Exhibit 26 in evidence and ask whether or not that is the communication to which you have reference.

A Yes, sir, it is. It is a broad clearance with respect to all other territories except --

THE COURT: Who is "CTN?

THE WITNESS: CBS Television Network.

THE COURT: What is a subsidiary of CBS?

MR. PEARSALL: It is a division, I believe, your

Honor.

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THE COURT: What?

MR. PEARSALL: I believe it is a division rather than a subsidiary.

Upon receiving that communication, Mr. Block, did you take any action with respect to foreign syndication of All in the Family?

Yes, sir. Upon receipt of that, we were then in a position to move forward with respect to a broad based sales drive throughout the world.

MR. GOULD: I move to strike it out as not responsive, immaterial.

THE COURT: Cverruled.

MR. PEARSALL: I didn't hear the ruling.

THE COURT: Overruled.

Q Proceed.

We moved forward in notifying all of our offices A around the world that we had this program for sale. We supplied them with pertinent information. We made arrangements to get audition prints out to them; copies of the programs that were being produced, so that our staff could screen the initial episodes and, in turn, that we could screen the episodes for prospective clients around the world.

We supplied them in due course with rating information, with reviews, and with all pertinent data to

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help them effect sales.

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THE COURT: Let me ask you, what does this mean, there is a note, "Shelley has the packager furnished area-by-area costs. If not, would you please get them for us?" What does that mean?

THE WITNESS: This is a -- this program is produced on video tape, and with respect to some of the talent costs, they must be paid area-by-area.

In other words, if you make a sale in Africa, let's say, even in one little country, you are then liable for a certain payment for the whole of the area, so that one has to keep careful track of the expenses on the area-by area basis.

THE COURT: I still don't know what you mean by area costs. Cost to whom?

- Q Could you explain what you mean by area? This has relation to AFTRA, does it?
 - A Yes.
- Q Could you tell the Court about AFTRA and the areas that AFTRA has set up?
 - A I am not an expert on the matter but --

THE COURT: I don't need all that. All I want to know is what costs are you referring to when you say area costs?

THE W MESS: These are payments to be made ultimately to talent.

BY MR. PEARSALL:

Is this what is called residuals?

THE COURT: To talent?

THE WITNESS: Yes, to actors.

THE COURT: You mean on a residual basis?

THE WITNESS: Yes. So that in order to appropriately have those payments made, you must keep track of the sales. Now --

THE COURT: Those are charged as expenses above the distrubtion fee?

THE WITNESS: No, sir, in this particular -- the residuals are the responsibility of the packager.

Now, what we do not wish to do is to make a sale, one sale, and obligate a very large payment where there are not going to be additional sales to ultimately cover that and put ourselves in a profit position.

So what we try to do up front is to determine what the actual costs will be area-by-area, and this was a very important factor, as a matter of fact, in our sales activities. It meant that in some areas, we simply did not proceed.

Q Going on into the spring and summer of 1971, did

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CBS Enterprises have further communications with CBS with respect to obtaining clearances in various foreign areas?

Yes, I believe you will find a series of exchanges between the CBS Enterprises' staff and CTN with respect to clearances, also with respect to the cost of clearances you will find memoranda, where we asked for the rights to go forward and sell in Canada, you would find that CTN asked us for a sales estimate before they allowed us to proceed.

In short, you will find, I think, a body of documents indicating our interest in moving forward with sales around the world.

- Can you identify Elisabeth Wellman?
- Yes, Mrs. Wellman is, I believe, manager of syndication for the Business Affairs Department of CTN, the CBS "Relevision Network."

THE COURT: Since this isn't a dentist's office, I would suggest that instead of extracting this bit-by-bit, I was going to suggest this morning that all names referred to in these various memoranda be put on a sheet with a stipulation as to who they are, because I can't conceive of any argument about that.

MR. PEARSALL: It seems like a very good idea to me. I was going to run through the names because they would obviously be meaningless to you in the exhibits.

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THE COURT: Fut it in a list. I have other things to do. I can't sit here and listen to every bit of information about everybody at CBS. Get together and do that.

MR. PEARSALL: Have you any objection to that?

MR. GOULD: None at all.

THE COURT: It is a glossary of terms.

BY MR. PEARSALL:

Q Apart from the initial sale to BBC, did CBS
Enterprises or its successor, Viacom, make any additional sales?

MR. GOULD: I object to that. I don't know of any sale to BBC. I have heard of some conversations.

Q All right.

THE COURT: Let's get one thing at a time. Withdraw the question.

Q Let's withdraw the question. Upon the spin-off, Mr. Block, what happened to CBS Enterprises?

A CBS Enterprises was merged into Viacom Enterprises.

Q Did theme come a time when in fact the proposed sale to SEC became a fact?

A Tes. The sale was consummated prior to spin-off, in the spring of 1971.

Q Thereafter, did CBS Enterprises or Viacom make any

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additional sales of All in the Family abroad?

A Mes, sir. In due course, a number of sales were made; in all, some 52 individual sales were made to 50 licensees in, I think, 15 countries.

MR. PHARSAML: Your Honor, a chart of the sales has been admitted in evidence but subject to a post motion to strike ---

THE COURT: What is the number of it?

MR. PERREALE: This is 590 -- and since I don't know whether a motion to strike will be made, I feel it would be best to get the identification of the chart, if that's all right at this time.

Q Mr. Block, I show you Exhibit 589 in evidence and ask you if you can tell us what that is.

A These are the program orders reflecting the various sales that we have made.

THE COURT: I thought you said 590. Now it is 589.

MR. PEARSALL: 589 is the underlying group of business records that support the chart. 590 is the chart.

Q Those are program orders covering sales of All in the Family?

- · A Yes, sir.
 - Q What does the term "program order" mean?

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A	A program order is the shorthand form that we us	36
to supply	the home office with the basic terms and	
conditions	s of the sales that our people make out in the	
fiel.		

Q I show you Exhibit 590 in evidence and ask you if you can tell us what that is.

A This is a summary of the information contained in the program orders which was prepared at my direction.

- Q Did you have a duplicate to check that chart?
- A Yes, I did.
- Q Did you find it to be accurate?
- A. Yes, I have.

THE COURT: Who fixes the price, the distributor or the packager?

THE WITNESS: We do, sir, the distributor.

THE COURT: The distributor does?

THE WITNESS: Yes, sir.

THE COURT: Without consultation?

THE WITNESS: That's correct.

O Did there come a time, Mr. Block, when Tandem purported to terminate Viacom's rights to distribute All in the Family?

A Yes, sir, in March of this year, I received a letter, I believe, from a Mr. Sunderland.

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THE COURT: If you have the letter, why let him paraphrase it? Offer the letter, let him identify it.

MR. PEARSALL: I don't have the letter handy, your monor, but I just want to fix the date when the purported termination occurred.

Q Mr. Block ---

THE COURT: But I don't understand what they did.

Did they terminate the distributorship or what?

MR. PEARSALL: They --

THE COURT: You better find the letter.

MR. GOULD: We have a copy of it here.

THE COURT: I just want to follow it in logical sequence.

MR. PEARSALE: Your Honor, with respect to the termination letter, we offer this for the limited purpose of establishing the termination and not for the truth of anything that's stated within the termination notice. This is — it will have to be given the next exhibit number. I believe it is 595.

(Plaintiff's Exhibit 595 marked for identification.)

Q Mr. Block, in your experience, is All in the Family a series similar to other situation comedies which preceded it?

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MR. GOULD: I object to that.

THE COURT: Read the question back.

(Question read.)

MR. GOULD: I don't know what it means.

THE COURT: I don't either. All right, sustained.

2 Mr. Block, does All in the Family, in your experience, have any characteristics which distinguish it from situation comedies previously in the market?

MR. GOULD: I will object to that, too, as calling for a kind of opinion I don't think this man is qualified to give.

THE COURT: I don't think it means that much, so I will overrule the objection.

Answer it if you can.

A Yes. It was a very unusual show, very different in many ways from predecessor programs.

As a matter of fact, as recently as last wee, the president of the NBC Television Network, Mr. Slosser, described it in a speech out in Hollywood as one of the landmark breakthrough programs of our time.

All in the Family is a singularly unique program, the first of its kind. It dealt with social, political and human problems in a most realistic fashion.

It set new trends. It was widely acclaimed, it

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In short, it was a very unique program.

was the first marriage situation comedy to be produced, to

my knowledge, on video tape, which carries its own set of

THE COURT: Well, now that over Mr. Gould's objection you have given an accolade to Mr. Lear and Mr. Yorkin, we may proceed.

> MR. GOULD: I didn't know we were all that good. MR. PEARSALL: We think you are excellent.

TRIAL, SEPTEMBER 18, 1973 (Transcript, pages 266-271) Plaintiffs' Exhibit 580.

THE CLERK: We have it.

MR. PEARSALL: Somehow it has already preceded me.

Q Mr. Block, does "All In The Family"contribute in any way to Viacom's prestige?

MR. GOULD: I object to that.

THE COURT: I did not hear that.

MR. PEARSALL: I inquired whether or not the reputation of All In The Family contributes in any way to Viacom's prestige.

THE COURT: Prestige? I will allow it.

MR. GOULD: It is a kind of a funny question.

THE COURT: It is a man talking about his own company, so the question is how much weight do you give it.
But let him say so.

A Yes, sir. It contributes enormously, and in very interesting ways, because we are in a highly competitive business, and we are concerned not only with the attitude that our clients have toward us but with respect to other sources of product. And our prestige with respect to other packages who have product that we might need is very, very important. People like to be associated with a winner. And whereas we once had a suggly of product that flowed to us when we were part of CBS, as an independent organization it

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was very important that we represent important, exciting programs. And certainly All in The Family is an example of just that.

BY THE COURT:

- O Do you do tie-in's to package deals abroad?
- A No, six, it is not a question of tie-in.
- Q You don't.

A It is a question of what you are handling, and the relative strength that you have in the marketplace as a supplier.

Turning to the other side, which is when we deal with the stations, internationally it was very helpful to be able to talk to broadcasters about All In The Family whether or not a sale was made or whether or not they would put it on the air, because it was an exciting, stimulating program, and it inured to our benefit to be representing it.

O Mr. Block, in the event that you were unable to supply All In The Family to the foreign market, would there be any effect in your opinion on the credibility that Viacom has in that market?

MR. GOULD: I object to that.

THE COURT: I will allow it in the same vein. But you ought to specify a little more. Is it a failure to be able to --

MR. PEARSALL: Make delivery.

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MR. GOULD: That is a hypothesis now. If this happened, would it be?

THE COURT: It has already happened. That is why we are in court. CBS was asked not to give them prints or whatever they need, videotapes.

MR. GOULD: I just don't think this kind of question has any probative value.

THE COURT: I know you don't, but I do. So I am the judge, I am afraid.

MR. GOULD: How can I fight with you?

THE COURT: You can't fight with that. But I would like to have specified a little more clearly, so we know what you are talking about. There are many ways in which you can be heard.

MR. PEARSALL: Let me rephrase the question, if I may.

THE WITNESS: Well, in the --

Q Let me rephrase the question, if I may. In your opinion, Mr. Block, would the unavailability for delivery to your foreign customers and potential customers of specific taped episodes of "All In The Family" have any effect upon your credibility in that market?

MR. GOULD: I object to that.

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THE COURT: No, objection sustained as to that.

There are two questions, as I understand it, if I may interpose for a minute. One is, if you have already contracted to deliver prints or videotapes and you are unable to do so, would that affect your position in the market.

THE WITNESS: Absolutely.

THE COURT: All right. If you did not yet have an absolute contract but somebody who once thought that you were a distributor for "All In The Family" suddenly found out that you were no longer there, that in effect you had lost that distribution right, would that hurt you in the market?

THE WITNESS: Absolutely.

THE COURT: How?

THE WITNESS: Because we are dealing with — international television in many ways is different from television as we know it in the United States. We are dealing with communicators. We are dealing, by and large, with organizations that are government or quasi-government organizations. They aren't show-biz people as we understand them in the United States. They have bureaucratic minds, they are planners, and they are, above all, interestd in what appropriate representations have been made to them.

Now, we have built our credibility in dealing around the world on absolute integrity. If we say we are representing something, we dark well better be representing it.

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And questions will be raised as to why we were out selling "All In The Family" and then we are no longer selling "All In The Family."

THE COURT: If that should happen, you refer them to me, that is obvious.

THE WITNESS: I wish we could do it that easily.

We have made representations to many broadcasters already
who have become interested in the program. The process of
buying sometimes takes a long time. And although we were
able to make certain deliveries, which was worked out in
your courtroom some months ago, there were still many other
pending matters which we were not able to go forward with,
where broadcasters were hopeful of closing with us, and they
are now going to have to make other plans.

THE COURT: Don't you ever once in a while get a real legal clearance problem in a territory or an area?

THE WITNESS: We are very, very careful. I would say that -- I can count on, you know, one hand the number of problems we have had where we were out in the field with something and then we had to withdraw it.

Bear in mind, sir, that this property has been in our hands and we had been distributing it in the normal course of business since the fall -- unofficially since the fall of 1970, and beginning in January '71 --

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THE COURT: It is roughly three years.

THE WITNESS: Which is a long time. We were closely identified with the program.

THE COURT: Next.

BY MR. PEARSALL:

Mr. Block, can you tell us approximately what percentage of the Viacom Enterprises' revenues from syndication activities in 1972 were derived from syndication rights which were acquired from CBS?

Yes, sir. In 1972, 42 percent, I believe, of our revenues came from programs that were given to us by virtue of the assignment from CBS.

Can you tell us what percentage of Viacom's total net profit last year, 1972, was generated by syndication activities ?

Almost 90 percent.

BY THE COURT:

- What is the other 10 percent? Q
- A Pardon me, sir?
- What was the other 10 percent?
- We are also in the cable television business.

MR. PRARSALL: You may cross-examine.

MR. GOULD: Can we just take about two or three minutes, your Honor?

TRIAL, SEPTEMBER 18, 1973 (Transcript, pages 276-277, 277a, 278-279) AG

question.

BY MR. GOULD:

Q What did you tell him and what did he tell you?

THE COURT: Anyhow, then go on to Mr. Gould's

A Well, we covered a number of subjects. One,

Canada. There was concern about sales activities in Canada,
and I believe I told Mr. Yorkin that we had not been able to
move forward with sales activities in Canada at the earliest
possible date, meaning when the show first went on the air,
because in the first instance the television network reserved
the right to extend the program up into Canada. And it
wasn't until the network exhausted the possibilities of
making the sale on an extension basis in Canada that we
were then able to move forward.

Two, Mr. Yorkin was interested in the idea of consultation with respect to the sales that we would be making. And I told him that from my point of view that was impractical; that it was simply not appropriate or easy to handle in the normal course of business when you have a man out in the field, where we give our people responsibility to close in a particular market situation, to check back constantly, not only with us but with the producer. So we had a discussion about consultation.

Three, Mr. Yorkin was interested in information.

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And I told him that while I could provide him informally with information about our activities, I really could not provide this information in a formal way, and that if he wanted such information we would have to talk to CBS, because our reporting responsibility was to CBS. In turn, CBS reported sales and other matters regarding the distribution, foreign syndication, to Tandem.

- Q You mean after June 4 or before June 4?
- A Both.

BY THE COURT:

- Q What is the situation now? Do you still report to CBS?
- A No, sir. In December of 1971 CBS requested that we report directly to Tandem, and we agreed to do this. And as soon as the request was made, we took all necessary and proper steps to reverse out the accountings to CBS and to begin reporting directly to Tandem. We tried to accommodate the parties concerned.

MR. GOULD: I will come to one aspect of that, your Honor. I just want to clear one thing up.

BY MR. GOULD:

Q In your conversation with Yorkin on June 4, wasn't there a discussion about the requirement -- the requirement -- that Tandem give its permission to conclude each and every

sale before moving forward.

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MR. PEARSALL: Objection, your Honor. I don't understand about a requirement. There has been no testimony about a requirement.

THE COURT: He has already testified as fully as he can on that. He said that is what Yorkin wanted. I don't know why you have to repeat the question.

Well, isn't that right, sir?

THE COURT: He has answered it. He said one of the items Torkin wanted was to have a right of consultation before they closed any deal.

MR. GOULD: The right of consultation is a little different from the requirement that we ask for or secure permission to conclude each and every sale before we move forward.

THE COURT: You go ahead with that.

MR. GOULD: Yes.

- O This document, which has been marked Defendants'
 Exhibit 5 for identification in a deposition -- we will give
 it an additional number -- this is your letter, isn't it?
 - A Yes, sir.
- Q In this letter which you wrote to him you were referring to the conversation on June 47

A Yes, sir.

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Q Correct? And in the letter you said, quote,
"Quite honestly our sales efforts have been hampered by the
requirement that we secure your permission to conclude each
and every sale before moving forward." Unquote. That is
what you wrote in your letter.

- A Yes, and --
- Q Well, that is all I want. That is what you wrote?
- A Well, I would like to put this in context.

MR. PEARSALL: I object to his interrupting the witness' answer. The witness was about to respond to that question to clarify --

MR. GOWLD: He responded. He said he wrote it in the letter.

MR. PEARSALL: The witness was cut off in the middle of his response.

MR. GOULD: I am going to ask him another question.

THE COURT: Answer the question.

A This request -- we are talking about one and the same thing, and this can simply be loose language, because he had asked for consultation or permission. This was also tied in with the question of getting the clearances, where we had to go back to them, because, as I indicated earlier, we weren't certain about what countries they had the clearances for. So we had to go back and we had to get

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clearances in each and every case. And consistently through the dialogue and the months I kept saying, "Can't you go out to the owners of the underlying rights and get the rights cleared on a worldwide basis, so we don't have to go back?"

And what I was referring to there was really the business of the rights.

THE COURT: Let us get one thing clear in the record that I don't understand at all. Everybody talks about clearance here, and nobody has yet told us who purported to have the rights.

BY THE COURT:

- Q Who is supposed to have had these foreign rights?
- A To the best of my understanding, sir, the foreign syndication rights were secured by CBS in its initial arrangement with Tandem. They, post-spinoff, had been assigned to us. However, we understood that, although we had the rights, there were questions regarding the availability of the rights in individual territories.
- Q Let me see if I understand. If I am wrong, correct me, because there is the way I am guessing now, and I admit I am guessing: That Yorkin and Lear had to make some kind of deal with the British owners of the former program.
 - A That is correct.
 - Q That when they made that deal they got a license, or

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TRIAL, SEPTEMBER 18, 1973 (Transcript, page 288) conversation.

Perlberger --

asked.

MR. GOULD: It will mean less, your Honor, after

THE COURT: All right, strike the question before it's

In the telephone conversation that I had with Mr.

the letter. I only used the letter for the date sir, because

he said in the summer. That is just to fix the time of the

Tell us about the conversation.

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THE WITNESS: This was shortly after the conversation that I had had with Mr. Yorkin. I would say this was some time the week of June 7th, as near as I can place it.

THE COURT: All right.

A Mr. Perlberger questioned our rights, and I responded that I was confident that we had the rights.

THE COURT: Right to do what?

THE COURT: When is this?

THE WITNESS: WE are talking about the distribution, the foreign distribution rights.

A And having stated our respective positions, we then went on to discuss a number of the matters that I had discussed by phone with Mr. Yorkin previously.

I thought that perhaps it might be helpful if Mr. Perlberger also had background on the complicated Canadian

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TRIAL, SEPTEMBER 18, 1973 (Transcript, pages 306-309)

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of the meeting at the Brown Derby is, they asked you a lot

of questions about the composition of Viacom, who the people

All right. I gather, then, that the substance

TRIAL, SEPTEMBER 18, 1973 (Transcript, pages 312-313)

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1	wc 5-11 Block - cross
2	A That is correct.
3	Q He urged you to do it, did he not?
4	A He thought it would be a good idea.
5	Q Would it be fair to say he encouraged you to do
6	it?
7	THE COURT: What difference does it make, Mr.
8	Gould?
9	MR. GOULD: I just want to get one word, your
0	Honor.
11	THE COURT: Encouragement is a matter of degree.
12	MR. GOULD: All right, it doesn't make any
13	difference. He suggested it.
14	THE COURT: Then we are agreed finally.
15	MR. GOULD: Yes, I think we are. I apologize
16	for not agreeing right off.
17	Q So after the Brown Derby meeting, did you make
8	any direct proposal to Tandem about a new deal?
19	A The result of the Brown Derby luncheon, the
20	bottom line if you will, was that we agreed, following the
3)	luncheon, that we would make a proposal. We had discussed
2	there were a number of items that we had discussed at the
23	luncheon that would be incorporated into a possible arrange-
24	ment between us.
25	THE COURT: Like what? I still have not heard.
	A Well, for example, at one point Mr. Hayes asked SOUTHERN DISTRICT COURT REPORTERS
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BY MR. GOULD:

TRIAL, SEPTEMBER 18, 1973 (Transcript, pages 324-326)) | omp

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(Defendants' Exhibit 707 marked for identification.)

- Q I am right; that is the response, isn't it?
- A. This appears to be the response that was made, yes, sir.

MR. GOULD: That is offered in evidence now.

MR. PEARSALL: No objection.

(Defendants' Exhibit 707 received in evidence.)

- Q You testified, I think, on direct examination, that on the effective date, that is, the date that Viacom became operative, June 4, 1971, right?
- A. I said the spinoff took place on June 4, 1971, effective December 31, 1970.
- Q I just want to know when was there a Viacom company that really functioned.
- A As a practical matter -- well, I don't know what that means, when was there a company.
- Q. When was there a sign on the door that said "Viacom" and a bank account for Viacom?
- A I don't know whether I -- no, there was a Viacom you mean Viacom as an independent corporation?
 - Q That's right.
- A. There was a Viacom as a subsidiary of CBS until June.
 - Q. No, Viacom as an independent company not

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A It began operation on June 4, 1971, but effective because - retroactive to December 31, 1970.

Q Until June 4th the personnel were all paid by CBS, CBS Enterprises?

A I was.

connected with CBS.

As far as you know, isn't that the way the people were paid; they were employees of CBS Enterprises?

A Yes.

And CBS Enterprises had, Aid it not, an accounting department?

A Yes, sir.

Q Did it have a legal department?

A No sir.

MR. PEARSALL: You are talking about CBS or CBS Enterprises?

Q Enterprises.

A The answer is no, sir.

Q They used the legal department of CES, right?

A Yas, sir.

Q . Did the accounting department of CBS Enterprises go over to Viacom?

A. Yes, sir.

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- Q How many of them?
 - A Well, to the best of my knowledge, all of them.
 - Q How many people?
- A I have no idea whether it's in the tens or the twenties or the thirties. I just don't know. I am normally not involved in counting the number of people that are in the accounting department.
 - Q Who was the head of accounting at CBS Enterprises?
- A I don't recall. Please remember, Mr. Gould, that we had planned to spin off in December of 1970, and therefore, arrangements were made not only to carry forward with personnel, had Viacom spun off initially on that date, but also we were bringing in new people to broaden and strengthen the staffing as we went forward as an independent company; so that we had many people in this interim period from December 31st and even prior on board that had come on board that were becoming part of viacom when it was to become an independent corporation.
- I misunderstood what you said before then. You just didn't turn CBS Enterprises into Viacom overnight; you had been working on it for some time; is that what you are telling us?
- A I am saying that, yes. We were involved in bringing in -- in the transference of people, in bringing in

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TRIAL, SEPTEMBER 18, 1973 (Transcript, page 328)

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TRIAL, SEPTEMBER 18, 1973 (Transcript, pages 331-333)

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MR. PEARSALL: You mean per episode.

THE COURT: Per episode? that is what I am trying to find out.

THE WITNESS: Yes, sir, \$6,000.

THE COURT: So if you had a 13-week series, then it would have to be \$78,000 for the world?

THE WITNESS: That is correct.

THE COURT: That is what I am trying to find out. What did you offer?

THE WITNESS: Well, what we did was to offer \$6,000 that we would have to meet a guarantee -- we would have to achieve gross sales of \$6,000 per episode in the first two years, and that was not acceptable to Tandem.

They countered with something else, a \$3,000 net per year, and that was unacceptable to us.

Then when we ultimately lost Canada, our final proposal, which they never accepted, was \$2,000 per episode, because Canada was a very keen market, and the network was able to extend the program into Canada, and we lost the benefit of all the sales, an on-going benefit of all the sales that we had made.

That was one area of conflict between us, a point where we disagreed.

Another area was with respect to the cancellation,

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which they wanted as automatic and which we wanted to be as on notice, a very important distinction when you are out selling.

THE COURT: Then you had perpetuity under your contract if you calimed through CBS and they wanted five years; was that it?

THE WITNESS: They wanted five. We had — we were willing to settle at seven as a practical matter, and finally there was never any response to Mr. Irwin's last letter in December, and as a practical matter we just continued to distribute under what we believed to be our rights through the assignment.

MR. GOULD: I have nothing more.

THE COURT: I repeat what I said before I started the question: I don't know what it all has to do with what is before me, but as long as we are going into it, I may as well finish it and find out what it is all about.

MR. PEARSALL: Iam going to have some relirect. Do you want to do it today?

THE COURT: How much, more than fifteen minutes?

MR. PEARSALL: Possibly not more than fifteen minutes

It might be fifteen minutes or it might be --

. THE COURT: Have you got a witness for tomorrow?

MR. PEARSALL: Your Honor, this is going to be our last

TRIAL, SEPTEMBER 19, 1973 (Transcript, pages 343-370, 370a, 371, 371a, 372-426)

tainment field?

lationship with ABC.

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MR. PIERSALL: I have no objection to --

THE COURT: But be alert, if he started wandering into hearsay, I will watch it.

MR. PEARSALL: I think we are there now.

Q Mr. hayes, in your answers to these questions, please confine yourself to what you know, you actually participated in, and it is a purely preliminary matter, and I was perhaps loose in the framing of the question, your Honor. I apologize.

What happened in substance in the relationship between Tandem and ABC?

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- A. To my/knowledge, two pilots were ptorudced. ABC did not exercise its option to go to series and their rights terminated.
- 0. Did you participate in discussions with any other network respecting the All In The Family series? Just yes or no.
 - A. Yes.
 - Q With whom, sir?
 - A. NBC and CBS.
 - Q And which came first?
 - A NBC.
- Q What happened there Was any arrangement or deal ever made?

MR. PEARSALL: I am going to boject, your Honor, unless

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arrangement or deal with NBC?

A No, sir, they were not interested.

MR. PEARSALL: Objection. I move that "they were not interested" be stricken. He can only know that as a consequence of a hearsay statement.

THE COURT: All right, strike it out. I don't think there is any dispute about it, but --

MR. PEARSALL: There is no dispute about it, your Honor, but I think that we are going to drift into a situation here of generalized responses, and I jsut want to be on guard against it.

THE COURT: All right, technically you are correct, and I will sustain your objection.

- You say that then you had discussions with CBS? Q.
- A Yes, sir.
- Q. Did you personally participate in those?
 - Yes, I did.
- When for the first time did you have any meetings or discussions with the CBS people respecting All In The Family?
 - A June 1970.
- Would you tell us with whom you met, where, and as precisely as you can, when?
 - The gentleman primarily representing CBS was Mr. A.

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that we would like to ask him to improve the money and other considerations so that we could at least break even and hopefully operate at a profit.

I told vr. Sipes that— I reminded him that he was aware that we had made previous pilots at ABC, and I advised him that we had no place else to go in our opinion but CBS, and therefore, we did not have any strength of negotiation on the basis of we would go somewhere else with the project, and so I was asking him to treat us fair and be equitable in improving the deal because the last offer he had given was not acceptable and we could not possibly produce a show on that basis.

Pursuant to that foundation, we discussed money, and all of the usual terms related to the production of a pilot film and/or series with CBS.

At the initial stages of the discussion, there was some question hout exactly what the show would be, and whether it would go on in mid-season or fall; based on CBS's requirement that they have a hold on Mr. NOrman har's services, I negotiated a special provision for compensation for holding Mr. Lear or having a right of first call of preemption on his services.

We discussed the above-the-line and below-the-line costs, the facilities problem. CBsinsisted that we utilize their

facilities for production as they -- as a policy matter.

THE COURT: You mean their studio?

THE WITNESS: They have production facilities at CBS

Television City and at Cinema Center Films, two CBS locations in Los Angeles, and one of the requirements that they have as apolicy matter is that producers utilize their below-the-line facilities. This does not pertain generally to major producers because they generally have their own studio facilities but wherever a producer does not have his own, he is generally not allowed to negotiate in the open market. It's a requirement for laying off costs, as it were.

Sipes had originally attributed a below-the-line cost in his original offer to Mr. Cohn, and we renegotiated that point to improve the deal some.

We also showed him a budget we had worked up and pursuant thereto got him to increase the above-the-line budget to some extent.

We asked him to give us the distribution rights to deal with so that we could sell them up front for the back end. He dismissed us in a --

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Hayes-direct

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- . Q Excuse me a moment. When you say distribution rights, is that the same as what are sometimes called syndication rights?
 - Yes, sir.
 - What does that mean?
- Well, that means that whoever has the distribution rights is entitled to take a distribution fee from the gross monies received from third parties in distribution and sale of the product, subsequent the network run.
- Q Just what is this process of distribution that you are talking about? In a general way. Don't get into a lot of details.
- Well, it is similar to any sales organization on an international basis. Some product lends itself more to foreign sale than others, and on a domestic basis to any other sales organization.

The outlet is a license fee arrangement with the third party, whereby they pay so much for the utilization of the product, and from that gross return, generally speaking, the distributer: first takes off his distribution fee, then deducts any monies advanced for prints and advertising costs and residuals, if that is the deal, and any balance, if any, is remitted to the producer.

In the case of a tape show, it is under the juris-

diction of AFTRA as opposed to SAG. SAG is the film union.

AFTRA is divided, has divided the world into — and the subject of this litigation is a tape show; it is under AFTRA jurisdiction — it has been divided, the world, into five regions, and when you sell in those regions, you immediately trigger a payment by the producer to the artists involved, that is, actor, writer, director, music, et cetera, of a residual payment.

Also there are dubbing costs and in some areas of the world you dub in Spanish or French or German or what have you, and one of the big problems with producers in this area, which we discussed at the meeting with Sipes, was the problem that, in most instances, of shows I had had with CBS, we had not seen any profits to producers because they cross collateralized costs from one area to another, and dubbing costs and distribution fees and other costs eat up the cross dollar and the producer rarely gets anything, so I asked Mr. Sipes to give to us, as a method of improving our economic position on this deal, the distribution rights so we can traffic with them on the open market.

In many cases we are able to get a reduced distribution fee.

Q Is there a market, to your knowledge, for these distribution rights other than the networks?

Hayes-direct

A Yes, sir.

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MR. PEARSALL: Objection, your Honor, unless we have a foundation for his knowledge on that question.

THE COURT: Yes, I think you are jumping into it rather abruptly.

I wanted to ask you this: The distribution fee that is paid, to whomever it may be, is a gross fee, and they must pay their own expenses from that, that is, the selling, organization, salaries and travel and all the rest of it, is that correct?

THE WITNESS: It is correct except, sir, when you say all the rest of it, that is not necessarily --

THE COURT: Well, they charge certain expenses, of course, but essentially it is a gross figure.

THE WITNESS: They pay all their overhead and all their personnel and things like that, and any monies they advance for the cost of prints or tapes.

THE COURT: I understand. That is merely an advance for the account of the package.

THE WITNESS: They generally do not pay residual costs to talent nor certain advertising costs. It generally depends upon the deal, but those are the general --

THE COURT: I just wanted to have the record clear that the 40 percent that we are talking about in this case,

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2	from that 40 percent the distributor has to pay his own ex-
3	penses, he maintains his offices, his personnel and so forth,
4	is that correct?
5	THE WITNESS: Yes, sir, that is correct.
6	THE COURT: All right.
7	Q Now, in your experience as a business manager and
8	attorney in the entertainment field, have you had contacts with
9	companies engaged in the distribution of television programs?
10	THE COURT: Where? Here or abroad?
11	Q Here and abroad.
12	A Yes, sir.
13	THE COURT: Make it separately.
14	Q How about domestic?
15	A Yes, sir.
16	Q And foreign?
17	A Yes, sir.
18	Q And how much experience have you had in that field
19	A I think I probably have as much experience as any-
20	body dealing with independent producers as opposed to major
21	producing organizations.
22	Q And have you dealt directly and personally with
23	a number of such distribution agencies?
24	A Yes, sir.
25	O And who are some of the agencies that engaged in

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this business?

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Hayes-direct

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Well, the Metromedia is one, ABC Films is spunoff into World Visions, another, NTA, NBC International, as I mentioned earlier, ILS; a low named Pearson has a distribution organization, Wolper organization, and then all of

And do these firms constitute a general market for the sale of distribution rights, to your knowledge?

the majors, such as Screen Gems, Fox, Universal, et cetera.

- Yes, sir, it is a competitive market. A
- And now, sir, would you go back to your conversation --

THE COURT: Before you go back, is there something like a standard distribution fee?

THE WITNESS: Generally, yes, sir, it varies. The fee will vary on a standardized basis with the product itself and the type of product. In other words, in the foreign market today, an action-adventure show will show for more than the situation comedy.

THE COURT: I am not talking about what it sells for. I am talking about the percentage of the revenue that is taken by the distributor.

THE WITNESS: The percentage varies in negotiations, depending upon the type of show and the strength of negotiation related to the success of the show and the market price.

Is there a standard fee that you would expect?

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THE WITNESS: For domestic syndication of television network product, off network, standard fee would be 35 ro 40 percent.

- Q How about foreign?
- A It would vary from 25 to 50 percent.

THE COURT: Would that variation be based on product or based on the different organizations to whom you give these distributionrights?

A Both. In other words, to amplify it, your Honor, if you would like --

THE COURT: Yes, I would.

Productions, who has an exclusive deal with ABC; they have a commitment over a period of years for multiple number of movies for television and series, a minimum of 25 and a maximum of 31 under the contract. By virtue of having a flock of product I was able to negotiate with four or five distribution organizations, including Viacom, and made a deal with Metromedia.

On the other hand, with producers who have one or two products your leverage in negotiation is less.

I made a very good deal by virtue of having the strength of product. Organizationally speaking, some of the majors are very firm on their distribution fee as a standard-ized basis, because they are manufacturing their own product

THE COURT: Let's take it as of the summer of '71. Would you be in a better position now than you would then?

THE WITNESS: No, sir, I don't think so.

- Mr. Hayes, these companies whom you identified, these distribution companies, do they, to your knowledge, compete with each other for distribution rights?
 - Yes, sir. A

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- They constitute a market, is that right?
- Yes, sir.
- Now, would you be good enough, sir, to go back to your conversations with Mr. Sipes and continue and tell us what happened and what you said, and particularly with respect to syndication rights, syndication fees or distribution rights and distribution fees. I think that is what we are most interested in.

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A Well, the conversation with Mr. Sipes in this area was rather brief, simply because he said, "Don't waste my time, Bill; you know you're not going to get it and I told Sam Cohen he was not going to get it."

And he said, "We're going to take it just like we have on other shows with you."

And he said, "Don't let's waste any more time on it."

Now, within the pervue of distribution rights sometimes, comes a discussion of other subsidiary rights, such as merchandising and music, music including record albums, et cetera. So at that point, having had a firm position by Don Sipes, with whom I do a lot of negotiations and hopefully being able to read him rather well, I moved over to attempt to get merchandising and music rights.

At that meeting he did give us the music rights on the basis that he didn't think it would be worth very much, and he said he would take under consideration the question of merchandising, that maybe he could give that to us, he would have to reflect on it and check his policy with his staff.

THE COURT: Was a question raised of CBS getting a profit participation above the distribution fee?

THE WITNESS: Not on the series generally, no, sir. It was on merchandising ultimately. They gave us the

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THE COURT: But you were not asked to?

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in the profits of merchandising.

show. This was a --

with it, yes, sir.

I think because the budget demonstrated there was not going to be much profit, no, sir.

THE COURT: Well, that is a guess on your part, I suppose. But it wasn't asked?

THE WITNESS: No, sir, not to my recollection, MR. PEARSALL: We are talking about this particular meeting on June 24, I take it. Is the record clear about that?

THE COURT: Yes.

MR. GOULD: That is all I have asked about so far

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of trying to get profit participations in package shows?

A Well, I was negotiating with them for a renewal

At about June 24, 1970, was CBS following the

A Well, I was negotiating with them for a renewal at that time on Hawaii Five-O and Carol Burnett, and Carol Burnett they did not expect to get any, but on Hawaii Five-O, yes.

O All right, sir, go ahead and give us the rest of the conversation, as best you can recall.

A Well, we continued our negotiation on all of these points, and discussed CBS approvals of principal members of the cast, because there was some question of replacing one or more of the cast that had been utilized in the previous pilots at ABC. We discussed the question of whether Norman Lear would actually be the producer or merely executive producer. We negotiated on that extensively. We discussed who would be the director. There was some talk about possibly doing the show in New York City.

Then I told them that Mr. Lear, in my judgment, would not move to New York City to do the show, and Don Sipes wanted to reserve that point because his program management had indicated to him the possibility of doing it in New York City.

There was also discussion about content of the

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Hayes-direct

show, and we were advised that MR. Lear was going to be meeting with program practices executives with CBS during that week and subsequent to our meeting about the contents of the show, and his own ideas, and therefore we pinned that point for a resolution by other parties.

We discussed the discussion of office space and start up costs and we requested pre-production monies from CBS.

Mr. Sipes said he would take it under consideration, but he would not commit to it at that meeting.

He subsequently did give us limited office space, free of charge, at television --

> Stay with the meeting, please, Mr. Hayes. What happened at the meeting?

I'm sorry. There must have been discussions of many other things at this sitting, I don't recall.

THE COURT: You didn't say anything about price. Was any price discussed?

THE WITNESS: Yes, sir, I think I did say money.

THE COURT: You didn't tell how or why. What was the offer that you thought was undesirable from your point of view when you came into the meeting?

THE WITNESS: When I came into the meeting, the offer of the show was 70 to five with 20 to five below the line

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costs estimated to be over 50.

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we agreed we would resolve it later.

THE COURT: How did you come out?

THE WITNESS: Price came out around, depending upon how we resolved some of the unsettled questions, between 80 and 82 five.

THE COURT: So that just to recapitulate, you picked up from about eight to ten thousand dollars that day in price, is that right?

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before, I think, I know Sipes pretty well, and I know when he

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366 is adament and firm about something and when he is negotiating at least I think I do. Sometimes I may not. But it was just that brief and there was no further discussion allowed or indicated, so we didn't have any.

Hayes-direct

THE COURT: Did youexpect that answer when you came?

THE WITNESS: If I thought about it, I probably would, sir, for the obvious reasons that I mentioned. I had hoped that we would explore every area and find some ways of improving, so I had not closed any doors in my own mind.

THE COURT: I mean, in your own experience had you found it such a closed area that it would be foolish to raise it?

THE WITNESS: Yes, sir, even though in Carol Burnett, who is a major star, they kept the distribution rights.

THE COURT: I didn't ask you that. You say you did raise it. Did you raise it in the hopes that you might get it?

THE WITNESS: I raised it in the hopes I might get it, but to be honest, in answer to your question, I didn't have any great expectation of getting it. But you never know in negotiation when they might give up something they have not heretofore given up.

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THE COURT: For example, do you how whether, if you said we'd stay with the offer in money and not seek any advance, whether you might have got the distribution rights back?

THE WITNESS: Well, I did put it in that context.

I said, "Well, give us the distribution rights so we can traffic with them up front to get more production money, because we can make a deal up front for financial commitment in the back and either get an advance at the time of production from the distributor or bank his contract and thereby provide more money up front."

And so I did put it in that context to him and he said no, and it is just that simple and definite.

Q Was anything said in this meeting about the distribution or sale of the program in Canada that you can recall?

A We discussed Canadian rights. It is a normal thing --

Q What was said about that, sir?

A Well, I asked to reserve Canada, and he said no, and I said, "Well, we're not quite sure that we are going to get those rights anyway."

He said, "Well, if you don't get them, obviously you can't give them to me but," he said, "I'm going to take

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the rights and," he said, "I will work up some arrangement to let you share in the benefits from Canada, but if I take it off network, you don't."

He said, "If we utilize Canada, we will give you a participation," and we expressly pinned that point as not being settled.

Q Well now, as you finished this discussion, what were the open points that you can recall?

A Well, he had made it pretty definite he was not going any further on the program price, nor was he going to reconsider his position on distribution rights. He was going to reflect upon our request for more money in the forms of the areas I have mentioned. He was going to reflect on merchandising. He was going to clear the \$100,000 provision that I had negotiated for Norman Lear predicated mainly not so much on committing the money, but whether it was necessary to do so by talking to the president of the network and the head of programming about what they wanted with reference to Norman Lear, and there were questions about dates or notices for production and things like that that did not relate to economics, except in that if they wanted additional programs, beyond the 13 that they were ordering we wanted adequate notices that we could have a continuity of production and not

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interrupt the production and fall under certain Guild Rules and Regulations.

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He said he would check that out and get back to us on what he could give us on that, and there may have been some others, but that is the best of my recollection.

- Q Did you keep any notes of that meeting, Mr. Hayes?
- A No, sir. I returned to California and dictated a memo to the file the next day.
 - Q And do you have that memo?
- A I think I have turned it over to counsel, yes, sir.
 - Q Did anyone keep notes that you observed?
- A Well, Mr. Sam Cohn and Mr. Irv Wilson was there primarily as theatrical agency packagers because their position was they had initially brought or their predecessor had brought the basic literary rights to Tandem. I think Mr. Irv Wilson was taking notes, and I think the gentleman that was there with Mr. Sipes -- I forget his name -- was taking notes, but Sipes nor I were taking any notes.
 - Q You were not?
 - A No, sir, not that I recall.
- You don't remember the name of the man who was there with Mr. Sipes?

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- Q Did you get any word from Mr. Sipes or anybody else at CBs following the meeting of June 24th?
- A I received word through Mr. Sam Cohn, who stayed in New York ---

MR. PEARSALL: Objection, your Honor.

THE COURT: What is that?

MR. PERASALL: There is an objection to the question at the point where/hearsay answer was commencing.

THE COURT: REad the question back.

(The last question and answer were read.)

THE COURT: What is wrong with that?

MR. PEARSALL: I interrupted at that point, your Honor, because I believe that we were about to hear what Mr. Cohn's response was going to be.

THE COURT: Wewould what?

MR. PEARSALL: Your Honor, I believed when I objected that we were about to hear what Mr. Cohn's report was, and I objected on the grounds of hearsay.

THE COURT: But he is obviously a talking agent, isn't he?

MR. COULD: I don't think there is any question.

THE COURT: There is no doubt about it.

MR. GOULD: I thought they had developed that on the plaintiff's case, that Cohn was one of the negotiating agents.

THE COURT: Sure, he is a negotiating agent.

Q Go ahead, sir, give us your answer.

A We had a conference call on or about June 30th from the Tandem offices in Beverly Hills to Mr. Sam Cohn --

MR. PEARSALL: I am going to object, your Honor.

This question and this call was the subject of close examination in several depositions in the preparation of this case, and in every case I was blocked from hearing what this call was by a claim of privilege, because Mr. Hayes had this conference call in the presence of Mr. Perlberger and/or Mr.

Berkowitz of the Kaplan, Livingston firm.

I must have asked at least three or four witnesses, including Mr. Hayes, about this conversation, and each/was met with the claim of privilege.

In such circumstances, I ask your Honor to exclude the testimony at this time.

THE COURT: Well, I suppose they can always waive the privilege at a later time.

MR. PEARSALL: I believe the use of theprivilege in that way and for that purpose to obstruct the discovery on the one hand, then to come forward at trial with a disclosure.

THE COURT: It's not very nice, I agree with that, but I am not sure of the legal effect. I am going to allow it on the theory that you may on cross examination develop what you

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would have in the depositions. It would have been preferable if you had raised the question before trial.

MR. PEARSALL: You honor, we had a number of questions,

I am afraid, which still remain unresolved because of the
shortness of time in this particular situation, and this
is one of them. There are others too.

THE COURT: That is my ruling, and I must say if it's done intentionally it's not a good tactic on the part of counsel.

MR. GOULD: I don't want to get into a big fight about it. I am not going to develop very much about it. I simply asked him whether he got word back from CBS and the answer really is he got it through Sam Cohn, and I am not greatly concerned about the content of the conversation.

THE COURT: Why don't you skip it then?

MR. GOULD: I will be glad to withdraw it.

THE COURT: All right, withdraw it.

- Q Did you have any further conversations after this with any of the CBS people?
 - A. Yes, sir.
 - Q With whom?
- A Don Sipes, Jerry Rubin, and Anne Nelson, and there may have been others, but those come to mind.
 - Q All right. Can you try to specify the conversations

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that you had with these people, when, where, with whom,
and who was present? Let's try to do it chronologically,
Mr. Hayes. WE are only talking about All In The FAmily.

A Yes, sir, I understand. I had conversations with Mr. Sipes directly by telephone -- one or two occasions in the immediate time fram subsequent to the June 24th meeting for the next 30 days or so, and with his west coast vice president, Mr. Rubin, and with Miss Anne Nelson, who is a business affairs negotiator on the west cost.

My conversations with Sipes werepursuant to the terms of the deal. My conversations with Rubin and Anne Nelson were primarily related to local facilities questions and what was below the line cost and what was not; and specifically, the question of the A.D., associate director below the line.

I discussed with Anne Nelson and Jerry Rubin the question of office space. I discussed with them, various things in that area.

As far as Sipes is concerned, I discussed with him provisions of the deal related to money and merchandising and Norman Lear, and the question of approvals of certain members of the cest.

The exact dates and times I do not recall, but it was all within the time fram of 30 to 60 days after the meeting of June 24th.

MR. PEARSALL: By whom to whom?

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- Q Of course, by whom to whom.
- MR. PEARSALL: Otherwise, I object to that question.
- A Sipes said he would have his business affairs

 people prepare a memorandum agreement. This is in a subsequent

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THE COURT: Was there ever a discussion of the assignment clause?

THE WITNESS: Yes, sir. I personally had lengthy

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discussion on it.

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THE COURT: When did they begin? That is what I am trying to find out.

THE WITNESS: They began in April and May of 1971.

MR. GOULD: Would your Honor bear with me on that, and let me develop it chronologically because there are some events in between that I want to --

THE COURT: You are developing it chronologically, but you didn't ask the question about June 24th; you didn't ask the question about July, and that is the only reason I interposed. I don't like to do that.

MR. GOULD: Well, your Honor asked a question which had I asked it would certainly have been the subject of an objection.

THE COURT: That may be.

MR. GOULD: With all respect.

THE COURT: All right.

- Q I show you plaintiff's Exhibit 12 in this case, Did you get that in the mails?
 - A. Yes, sir.
- Q. Was that the first time that you had seen a draft of a proposed agreement?
 - A. To the best of my recollection, yes, sir.
 - Q I direct your attention to the fact --

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THE COURT: Excuse me, Mr. Gould. Since I don't have the exhibits her, if you would mertion the date as well as the number, I can always look up the number later.

MR. GOULD: The date is September 25, 1970, and I will hand it up shortly.

MR. PEARSALL: Would you like to follow with one?
THE COURT: I don't need it. I know what it is.

Q I direct your attention to the fact that the covering letter, the first page of it, refers to Wally's Castle. What did that mean?

A That was a working title of the American adaptation of Till Death Us Do Part. It was ultimately renamed All In the Family.

- Q. So we are talking about the same program?
- A. Yes, sir.
- Q This was the first draft, you tell us, that came through, correct?
 - A. To the best of my knowledge it was, yes, sir.
- p. Following this, the receipt of this draft, Exhibit

 12 on or about September 25, 1970 were there any further

 negotiating discussions with the CBS people?
- A Yes, sir, the usual ones that occur in that kind of a situation.
 - 2 Try to tell us when, where, and with whom.

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A I think that upon receipt of my copy of that memorandum, I directed a letter to Sheldon Perry, taking exception to some of the deal points covered in his proposal, and reserved the rights to Sam Cohn and Martin Perlberger to make their own objections additionally.

A I show you a document which is plaintiff's Exhibit

16 in evidence, and is that the leter you wrote to Mr. Perry?

MR. GOULD: That is dated, your Honor, October

6, 1970.

A. Yes, that is.

Q In substance, this is your comment or reply to the draft that was enclosed with Exhibit 12, the letter of September 25th; is that right?

A. Yes, sir.

After that, were there any discussions or negotiations with CBS relating to this program?

A Yes, sir.

Q. When and where?

A. They continued intermittently for many, manymonths.

Q With whom, sir?

MR. PERRSALL: Your Honor, I am going to object to this unless it is established that this witness has personal knowledge through participation or something, because this is just a general statement that there were negotiations

- Oct ober 6th or 7th, 1970?
- Themeetings were limited. The telephone conversations and communications were many. How many I really don't recall.
 - Daily, weekly.

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A. I would say starting in July and August and September when production problems were arising regarding facilities

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on the air.

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and people and designation and allocation of expenses,

I was at least on a two or three times a week basis with

Anne Nelson and Jerry Rubin.

THE COURT: Let me ask you, when did you actually start production of a new episode?

THE WITNESS: I am sorry, your Honor, I honestly don't know, but it was some time in the fall or late part of 1970.

THE COURT: You went on the air in January 1971, I gather?

THE WITNESS: Yes, but --

THE COURT: Was that the pilot or was that with -THE WITNESS: No, sir, ti was a firm 13-show commitment

THE COURT: I know that, but your first episode, was that the pilot or was that something that had already been produced under the new arrangement?

THE WITNESS: It was something that was produced under the new arrangement. The old pilot at ABC was not utilized.

THE COURT: What was the lead on production time there, do you know?

THE WITNESS: Wall, generally the lead on production time in All In The Family is two to three weeks.

THE COURT: But the first one?

THE WITNESS: It may have been a little more then. My

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recollection is somewhat vague, but to the best of think they started production in November. It may have been Oc tober, but I think it was November.

- In other words, you were still negotiating while they started production; is that correct?
 - A. Yes, sir.
 - Q How long did the negotiations go on?

THE COURT: Wait a minute. Let meorient myself first. When was the written contract executed, these three documents that you have seen here in the court?

THE WITNESS: In 1971, in August or September 1971.

- That was after the show had been on the air for about ten months, eleven months, something like that?
 - A Yes, sir, it had been rerun during the summer too.
- Q. Did you get other drafts of a proposed agreement after this one which is plaintiff's Exhibit 12?
 - A. Yes, sir, I think I got copies of them.
 - Q How many drafts were there?
 - A. I don't remember, Mr. Gould, how many.
- Q. Am I clear, sir, that after you got the draft that was enclosed with the September 25th letter, Exhibit 12, Mr. Perlberger began to workwith you on that material?
- Yes, sir. The sequence of speaking agents and negotiators was Sam Cohn, and then I took over, and then it

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Can you give us the dates of the meetings?

A I think I have confirmed those dates in my prior deposition by a reference to my calendar, but I don't recall specifically. I do recall it was in March of 1971.

We will refresh your recollection in a moment. What happened at that meeting, just the substance of it?

We requested relief because the budget had not been adequate, programming had requested certain changes in the format, Mr. Lear had suggested certain changes in the format, such as adding a neighborhood black family to the format as a regular cast or repeating cast, which increased the running cost of the show.

The below the line expenses were running more and so were above the line.

The writing budgethad exceeded the anticipated amount, and I asked Don Sipes if he would give us more money, if he would give us the distribution rights, if he would give us the package on a license fee basis, all of those things.

I did in fact negotiate directly with Sipes and Rubin thet day and Mr. Lear and Mr. Yorkin supported my negotiation efforts, netogiating efforts with factual information related to their costs, and Mr. Sieps did in fact convert the deal to a license fee basis as opposed to splitting the above the line and below the line, so hat we had a flat amount to deal

with and hopefully savings wherever.

384

He did give me an additional \$750 per episode. He did agree to pay the actual out of pocket costs for the black family. He did agree -- he did not agree to give us the distribution rights. He did agree to --

THE COURT: Is that domestic or foreign?

THE WITNESS: Either one.

THE COURT: I beg your pardon?

THE WITNESS: Neither one, sir.

THE COURT: What did you ask him for?

THE WITNESS: I asked him for all the distribution rights.

Q He wouldn't give you either?

A. No, sir, he laughed at me again, thought I was kidding.

THE COURT: Let me ask you, was this conversation before or after the FCC ruling on divestment?

THE WITNESS: It was in March of 1971.

THE COURT: But in your mind was there already a knowledge that CBS itself could not be the distributor at the time you asked for these distribution rights?

THE WITNESS: No, sir, I personally did not have that knowledge, I am sorry to say. I wish I had.

THE COURT: You did not.

Q. After this meeting which you place in March of 1971,

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did you write this letter, Exhibit 29, plaintiff's Schibit 29 in evidence, to Sipes?

MR. GOULD: It is the March 26th letter, Judge.

- A Yes, sir.
- Q Then following that, sir, did you write to him the document which is plaintiff's Exhibit 43 in evidence, letter of May 26th from you to Sipes? Is that your letter to him?
 - A. Yes.
- And then as I understand it, you got back from him, from Sipes, the document which is plaintiff's Exhibit 44, a letter dated June 3, 1971?
 - A. Yes, sir. May I see it?
- Q. Sure.
 - O AS of June 3, 1971, will you tell his HOnor what the situation was, first of all with respect to the production of All In The Family, and -- well, start with that. What was the situation with All In The Family as of June 3, 1971?
 - A. Well, as of June 3rd, they were on a hiatus in production. That's the summer months. I am not sure I understand your question, Mr. Gould.
 - The program and been on the air?
 - A. OH, yes, it had been on the air starting in the mid-season -- February time frame of 1971 for 13 shows and then it had been rerun, those 13 shows, in the summertime,

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Q Mr. Hayes, we are in the spring of 1971 now.

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A.

Yes, sir.

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O Did there come a time during that period when you had any conversations with anyone at CBS about the assignment?

A Yes, sir.

Assignment of the contract. with as much specificity as you can summon, would you tell us please, with whom, when, where, and what did you --

MR. PEARSALL: Objection, your Honor, parol --

THE COURT: What?

MR. PEARSALL: I am objecting to it on the basis of the parol evidence rule.

THE COURT: You waived that so long ago I have forgotten how long it was.

MR. PEARSALL: I don't believe I have, your Honor. With respect to our testimony, we were attempting to establish under the well known exception to the parol evidence rule, the date of the agreement, and we offered absolutely no evidence with respect to a variation from the written agreement. This evidence is being offered for an entirely different purpose, which is not an exception to the parol evidence rule, and that is to vary the written terms of an agreement. Therefore, I —

THE COURT: I don't understand it as such. No, I think what it's going to turn out to be is the question of whether,

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about that? " And I said, "Well, Don, you know if Martin

a position on our right of assignment. Are you serious

takes a position on something as attorney for TAndem, 389 have to be serious about it, and the answer is yes."

And coincidentally I had at that time learned about
the contemplated FCC position. It had been a matter of
public knowledge in he entertainment industry by that time,
and I said, "Is it true that you are spinning off these
rights to Viacom?" And he said, "Yes." And I said,
"Well, I think that Martin's position is even that much more
valid because in all of my history of dealing with CBS,I have
neverknown you to assign."

And he said, "Well, you know it's our boiler plate provision. We always have it." And I said, "Yes, I know you do, but I have known also that it primarily was for other purposes, and not for the purpose of assigning distribution rights. Primarily, it's for the purpose of assigning a talent or a literary property or an independent production to a major or whatever it deemed necessary in the packaging of a show within the CBS umbrella."

And I said, "I have never known you to assign distribution rights, and I don't think that you should do it."

And he said, "Why not?" And I said, "Well, number one, I don't know how you are going to fulfill your obligation tous. We requested these rights on repeated occasions. You denied them to us, and we dealt with CBS on the basis that

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we would have CBS, and we do a lot of business with CBS, Tandem Productions does, and I do a multitude of more business, and we feel rather secure with CBS in our relationships, and know that we get get proper reportings and accountings and get a fair shake in the distribution, and we just don't think it's right to hand it to somebody that you avor," and I said, " Even assuming you have the right, which I don't for purposes of this discussion," I said, "I think you have at least an implied condition or obligation as our agent or our fiduciary or as our partner, whatever you want to call it, to go to the open market wiht a show that's as important and successful as All In The Family, and make an arms-length deal to give us the benefit that we thought we had in dealing with you. " And I said, "Based on this position, I think Martin's

And I said, "Based on this position, I think Martin's exception to your submitted memorandum agreement is quite proper, and we are going to have to take it all the way."

And I said, "I am sorry, you and I are good friends, and I know this puts you in an embarrassing position, but I am sorry, we are going to ahve to do it, it's too important with a show of this success; and I would certainly recommend to my clients that if you submitted proposals to the open market on distribution fees, and Viacom qualified equally with everybody that we would go with them on quality of manpower, which we have no knowledge on, and on competitive pricing, on

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distribution fees "because there was no doubt in my mind, as I told him, that we could get a special rate on distributing a show of that success.

He said, "Well, Viacom is merely a spinoff of CBS Enterprises, and its' exactly the same people, so if you are dealing with us, you are dealing with them."

I said, "Well, you know, it can't be the same people because we won't have the benefit of your influence and other people with whom we deal," and I said, "Let me ask you, are they taking all of the accounting, legal, and business affairs people with them that I will have to deal with in getting reports and accountings and fair shakes and residual payments to third parties and guilds and things?"

He said, "I don't think they are, but I really don't know the anser to that."

And I said, "Well, Don, I am terribly sorry, but we are going to have to stand on that point."

He said, "Well, look, will you do me a personal favor?"

Isaid, "What is it? If i can, I will."

He said, "Will you talk to Viacom and find out who they are and what they are and make an effort with an open mind to make adeal with them on your own, and get me off the hook here, because this is going to be a bad situation internally in the midst of this spinoff."

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And I said, "WEll, of course." I said, "You know
I would be happy to do that, and I feel certain that my
principals will. AT least we will make the effort. Who do
we talk to?"

He said, "I will have Willard Block, who is the man on the line, get in touch with you or with Bud Yorkin and Norman Lear."

And that's the way we left the conversation.

THE COURT: I think this would be a good time for our morning recess. Five minutes.

(Recess.)

BY MR. GOULD:

- Mr. Hayes, had you completed describing your conversation with Sipes?
 - A. Yes, sir.
- Q. Did you also discuss this quustion of assignment with anybody else at CBS?
 - A. Yes, sir.
 - Q Who?
 - A. Jerry Rubin.
 - About when did this happen?
- A It was within the same time fram. I think it was prior to the conversation with Don Sipes.
 - Q Was this a personal conversation or a telephone

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A It was a --- I think it was a telephone conversation. Yes, I am reasonably sure it was.

Q What conversation didyou have with him on the subject?

A. It was generally the same kind of conversation

I had with Sipes.

Q Tell us what it was, in substance what you said.

A It started off with Rubin saying to me, "Look,

Perlberger is giving Annie a hard time, and will you get him

off her back on a lot of these nonsense requests he is making,"

and I said, "What are you talking about?" And he said,

"Well, to start with, you know we have the right of assignment.

We always have it; it's our boiler plate. What is he making

such a big deal about?"

And I said, "Well, Jerry, it's come to our attention that you are going to be spinning off product, which is something that we have never run into before with CBS or, indeed, with the other networks either, and it becomes a serious problem. I think Martin Perlberger took exception to the assignment clause on a generalized attorney's analysis of the proposed agreement, but from my point of view I now find it even more distressing in view of the information that I have begun to receive regarding the spinoff of CBS."

He said, "Well, we have the rights to do that." He
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said, "We can give it to whomever we want."

And I said, "I don't know. Maybe you can and maybe you can't. I don't think you could give it to your brother-in-law, for example, who may be a small distributor, but is not at the standard that CBs Enterprises was and is. I think there is an implied condition that you act either as our agent orour partner or our fiduciary of some kind, and when you are dealing with our product and our right and our money, that you give us a fair shake."

He said, "Well, you are going to get a fair shake.

You are still going to have the same people and the same setup
that you have at CBS."

I said, "WEll, it may be so. If that is the case, may be I don't have any argument, but," I said, "that isn't the information that I get from talking to various people about what's involved in this spinoff of a public company involving new people and new things," and I said, "even so, I just think it's wrong, and I don't know how -- my understanding of what the FCC rule is going to be is that you cannot be involved in this any more, and how are you going to police and supervise and protect our interest and fulfill your obligations?"

I said, "I don't understand this, and maybe when all

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of the facts are out on the table, I will back off and so will Martin Perlberger, but; I said, "the facts indicate to me that Martin's position is quite valid, and he said, then you are going to support this? You are not going to overrule it?"

I said, "Absolutely not." And he said, "Well, we may have a serious problem."

I said, "Well, I am sorry. I hope we don't, but we will just have to see."

- Was that before or after your talk with Sipes?
- It was before.
- Did you ever discuss this subject of the assignmentclause or assignment with Miss Nelson?
- Only in passing. I did not get into the discussion with Miss Nelson as I did with Rubin and Sipes.

She raised it. She raised three or four points. This was one of them.

And I said, "Annie, look, you know if Martin is taking a position on something, you know I am not going to overrule him or anything. I will be glad to talk to him about it, and if he wants to come back to you after we discuss it, that's up to him, but I am certainly not going to say anything to you, Anne, that would derogate the position Martin has taken.

And that was about the extent of my conversation with her

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here you did get distribution rights. Was I wrong in that,

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THE WITNESS: I think we were talking about profit participation, weren't we?

THE COURT: Yes.

THE WITNESS: We did not give CBS profit participation on Carol Burnet, but they did have the distribution rights, for example, on foreign and so forth, and I dealt with CBS Enterprises in that context, but not in this same type of situation.

- Q You knew what CBS Enterprises was, did you not?
- 12 A. Yes, sir.
 - Q What was your understanding of it?
 - A It was the distribution, merchandising, and subsidiary rights arm or division or subsidiary of Clumbia Broadcasting System.
 - Q. Had you ever had any negotiations directly with CBS Enterprises?
 - A. Only on one occasion about ten, twelve years ago, having to do with a daytime merchandising on a daytime show.
 - A Let's get back to the meeting with the Viacom people.
 Would you try to fix the date as precisely as you can?
 - A I think it was July 19, 1971, at the Brown Derby in Beverly Hills.
 - Q You got there, Mr. Block and Mr. --

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- A Iry Wilson.
- Q Irv Wilson.
- A And Mr. Yorkin and Mr. Perlberger and myself.
- Q And yourself?
- A Yes.
- Q Will you tell us what conversation you had with these gentlemen?
- A Well, we had the amenities of meeting for the first time, and although we had talked by telephone prior to that time, and started our luncheon.

And Mr. Block said, "I am here to enlighten you about Viacom, its operation, its people, and to show you why we would be as desirable as anyone to handle your product as your distributor."

And I told him, I said, "Look, be sure you start off with the premise thatour position is you do not have any rights to this."

He said, "Yes, I understand that is your position, and be sure you understand that I have just the opposite position, and on that basis let's go forward."

Mr. Perlberger had said to him or did say to him at some time in the meeting comments about distribution fees, and Mr. Block responded laying out their distribution fees.

I said to Mr. Block, "My experience with distributors

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is generally bad with reference to cross collateralization of costs and reporting and deal making, and if we enter into a deal with you, I want some protections in the areas of minimum performance guarantee or -- and/or advances or guarantees per episode. I do not want any cross collateralization by areas or for dubbing purposes in one language to another. I want overlaying anything the provision that under no circumstances will any deal you make put us into a deficit position because of our obligations to third parties for payment of residuals, et cetera; and what I would like to have is a trial period of oneyear to see how it works, and you can have—an option to renew subject to meeting a certain minimum performance standard."

Mr. Block responded that he wanted to know what rights we had throughout the world because there had been some problems, and I told him I was sorry we still did not have that reconciled, not because of not trying, but we just did not have it completely reconciled with Beryl Virtue on behalf of her clients in England, but that we would continue to work on that area, and let's operate on the premise that we had the world-wide rights; however, he should be aware that the program had been distributed in certain parts of the world under another name.

And he said that he did not think tha they could prove

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up their ability in one season to us, that they would need at least two years, and he would be receptive to either a minimum guarantee — he would not give us an advance but he would either give us a minimum guarantee per episode and/or a minimum performance guarantee as a condition precedent to exercising his option for subsequent terms.

He wanted to talk about a performance guarantee based on worldwide gross. We wanted to talk about a performance guarantee based on net to producer.

We did not reconcile these points at the meeting, but we discussed philosophy, and he indicated receptivity to certain things and non-receptivity to other things.

I told him that I thought it was a constructive meeting, and very pleasant, and that I hoped we could work out something because obviously there was a problem with CBS that we had not resolved, and Don Sipes had urged us to try to come to some meeting of the minds on a working arrangement so that he would be taken off the hook, and I told Willard Block at that meeting that Don had said to me --

Q Don Sipes?

A Sipes had said to me, "Whatever you work out with Vacom will be satisfactory to us with reference to your distribution deal."

So that was the general context of that luncheon.

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Was anything said about the accounting problems that are encountered in these distribution arrangements?

MR. PEARSALL: Objection, your Honor. I don't believe there has been any testimony about accounting problems, no foundation.

THE COURT: Overruled.

A As I mentioned earlier, Mr. Gould, at the outset, I think, of the meeting with Mr. Block, I told him my experience had been bad in this area generally, and what was he doing about that, and who was going to be handling it.

He told me that he was going to set up a business affairs department, and that he was working on getting good people for that, and that he would be in touch with me about who would be in what position, but he assured me that he would operate a first-class operation in this area.

- Q. Did you hear again from Mr. Block on any of these points that were discussed at the Brown Derby meeting?
 - A Yes, s ir.
 - Q When and where?
- A. We spoke by telephone a few days later or a day or two later, and he told me that his assistant would be in touch with me, asked me how I thought the meeting went. I told him Ithought it went rather well, and that I had recommended to my clients that we attempt to make a deal with them on a

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basis that would give them a fair and reasonable opportunity to demonstrate the representations he had made at the luncheon.

Q Any further talks after that?

A I talked to Mr. Block periodically after that over a period of months, and had two or three meetings with him. Do you want to get into any specifics on that?

Q We for the first time did it come to your attention that Viacom was actually selling All In The Family for distribution?

A To the best of my recollection, it was in May of 1971 when Mr. Yorkin called me and said, "I have just discovered that CBS has made a sale of All In The Family on a one-station basis in Hamilton, Ontario;" and Mr. Yorkin was quite upset and told me to find out the facts and to get in touch with somebody, and preferably a top man at CBS and get this cleared up right away.

So I immediately placed a call to Don Sipes. I spoke to Don Sipes about it. I reminded Don that we did not know clearly the extent and scope of our rights from England yet, that we were having difficulty with the authors, and that was not purely an arbitrary thing but they had informed us they were trying to clear up some of their previous contracts on Till Death Us Do Part so they knew exactly where they would be

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24 25 through their lawyers and solicitors, about giving us a grant of those rights in various countries; and therefore, making any sale without talking to us as he had previously promised to see was done, was wrong; and secondly, even if it we had the rights and they had the rights, selling/on a one-station basis was terrible on a show that indicated this popularity, and please find out if there was any truth in what we had heard, and find out who was responsible for it and have them directly in touch with Mr. Yorkinwithout delay.

He promised me he would. That was the end of the conversation.

- Q Did you hear anything more on the point?
- A A Mr. Jamieson responded pursuant to all of that as the man who was handling in some capacity these sales, and indeed, confirmed that there had been --
 - Q Did you speak with Jamieson?
 - A No, sir, I did not speak with Jamieson.
 - Q Who did?
 - A Mr. Yorkin.

He said, "You're right, and I will certainly look into that on our basis because we want to protect ourselves

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THE COURT: I am not going to give much credence

MR. PEARSALL: Objection; asking for hearsay

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to the answer unless it is explained how he knows what somebody else did, but I assume that will follow.

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MR. GOULD: Yes.

A I was trying to be responsive, and if I am allowed to answer that, Mr. Yorkin then told me on two or three occasions that Mr. Block had told him that he would have his sales people speak to Mr. Yorkin or Mr. Lear about purported substantial deals, that they did not feel that they could run to him on a day by day basis, and Mr. Yorkin didn't accept that as — he told me, Mr. Yorkin told me he did not accept that as a proper solution to the problem and that he wanted to meet with whomever was necessary and get this whole thing resolved, and that was prior to the Brown Derby meeting

Q Was the subject --

MR. PEARSALL: I am going to move that that be stricken.

THE COURT: Strike it out.

- Q Was the subject discussed at the Brown Derby meeting?
 - A Yes, sir.
 - Q Who discussed it?
 - A Mr. Yorkin and Mr. Block.
- Q And what did Mr. Yorkin say, and what did Mr. Block say on the subject?

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Mr. Yorkin repeated that he wanted Viacom or A appropriate representative of Viacom to check with him on the making of any deal at all, and Mr. Block said, "It's impracticable to operate that way, but we will check with you for approvals before we make any substantital deals," and we tried to define substantial deals, and we did not have much success at that meeting in defining substantial deals, and Willard Block said, "Look, whatever you think about our organization, I have been selling product for many years, and I think I know what is substantial and I think my people know what is substantial, so if we are going to work out an arrangement as requested by Sipes, and as indicated that we want to here, give me the benefit of when I say that you will be consulted on substantial deals, you will be consulted, and until such time as I do not fulfill that, then go along with me," and that's the way we left it at the meeting.

THE COURT: Was the subject of clearances raised on particular areas?

THE WITNESS: Yes, sir. I think I did touch on that. We discussed -- I think at the first of the meeting I advised Mr. Block that we still did not have those things worked out, but we were attempting to do so and hoped to get the final resolution of those rights and have it documented so that we could traffic with them as soon as possible. Mr.

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and Mr. Lear were complaining about the lack of communications with Viacom.

I said to him, "Willard, if we are going to have a relationship, you are going to have to see that your people do what you have represented us that they will do, and that is, to communicate clearly about any substantial deal and to give us data and information related thereto, because you promised that the least you would do would be to give us a deal memorandum immediately following the making of any and all deals, and that you would attempt to communicate with us prior to making any substantial deals, and it is my information from my clients that you are not doing this, so will you please do it?"

That was the first conversation.

Q - What did he say to that?

A He said, "I promise you I will. I am having difficulties organizing my business affairs department. I think I am bringing in Art Zeiger who is an experienced man in this agency to head up business affairs, and he will get all of these things ironed out, and please bear with me."

I replied to him that I certainly appreciated the problems in those areas and would try to do so, but to keep in mird that my principals were not happy and that they would make the final decision, and I even suggested to him that he

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24 25 day ? MR. PEARSALL: I am not complaining so much about the date, your Honor, as I am complaining about the fact that the witness obviously has no recollection of a specific

it is over a period of months or whether it is on a particular

THE COURT: What difference does it make whether

conversation. I think he stated as much.

THE COURT: He is telling you the substance of what he said and what they responded. It is an issue. As I understand it, they were complaining that they didn't get reports immediately upon the making of a deal and, number two, they were not, I suppose, getting adequate requests for clearance and so on and, number three, that they were not really getting a request for what they said was to be a prior acquiescence or consent to substantial deals.

He has made it perfectly clear. The only question in it, how long did that series of conversations continue on the same theme?

I will allow it.

Q Just give your recollection of the substance of the conversations, whom you talked with, and what you said to each other.

I have a rather clear recollection on the substance of the conversations. My recollection is not too clear of the

 specific times, but within the time frame as indicated, I did speak to Mr. Block, specifically again on at least two occasions, and I told him, "Willard, my principals and my head of production accounting are not getting the information you promised. Now, if you want to expand your relationship with Tandem and, indeed, with me on other clients which you have spoken to me about, you certainly are not demonstrating the foundation for that kind of an expansion of relationship. And furthermore, if this keeps up, I am afraid that it is going to be disruptive of the entire relationship."

I spoke to Joe Irwin on two specific requests for accountings in areas, area by area, that Keith Nichol had written to him about and did not get a reply on, and I said, "We must have these because the Guilds are on our back and Tandem's reputation and, their legal responsibility to the Guilds is in jeopardy. And we have been told by one of the representatives of AFTRA that if we don't give them proper reportings on these shows immediately, that they are liable to file a claim against us to pull our franchise."

And Joe Irwin promised that he would get it out and, indeed, I think I wrote confirming that confirmation. I think there is data in the file on that. I am not sure, but my recollection is I did.

MR. GOULD: Excuse us just one moment. I think

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we have something on that.

While MR. Ferraro is looking for it --

THE WITNESS: I either wrote to Irwin or Block on that. I am pretty sure I did.

MR. GOULD: We will come back to it.

Ω I think it has been covered, but how did you pay these or how did Tandem pay these residuals? Did they have to wait until the money came in?

A The system that was supposed to operate and did not, but in answer to your question, how we paid it, Tandem just paid the money and we were supposed to get information from Viacom as to where they had made commitments and therefore compute the residuals, and therefore advance the money to Tandem to pay to the artists when it was due.

Q Did they do that?

A No, sir, but I must qualify that; they ultimately made remittances, but they did not do it on time and in accordance with our understanding, and as a result, on more than one occasion we had to make remittances to fulfill our obligation on the theory — or the presumption that we would get the money from Viacom sooner or later.

THE COURT: What I don't understand is this:

You say under our arrangement, under our relationship there
was a certain time they had to do this or that. What are you

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basing all that on? Was there a written piece of paper or

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ment with Viacom.

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THE WITNESS: Well, your Honor, I thought we had a deal with Viacom, a working arrangement, to say the least, for period of time.

THE WITNESS: Yes, sir, there was an exchange.

Viacom made a proposal and we made a counter proposal, and

we continued operations with Viacom. I continued to be the

general business administrative officer of the corporation

until December of 1972, at which time another gentleman was

brought in to become the general administrator of the company,

simply because their activities had gotten too broad for me

to handle in my capacity for my retainer, so I continued

THE COURT: In writing? Was that in writing?

THE COURT: I am assuming you had an agreement, but the question is what was the agreement? I mean, when were they supposed to give you this and when were they supposed to send the money?

to operate on the theory that we did in fact have an agree-

THE WITNESS: On the question of residuals it was clearly understood between Joe Irwin and my office that they would notify us when they made the sales in the respective five areas of the world which triggered the obligation

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for residuals and would report to us and remit to us concurrently, so that we could disperse the money promptly without the Guilds having to pick it up on a tardy basis and get on us and then have us make remittances late.

THE COURT: Let me understand that. If you have an installment sale where you advance credit, do you pay the residual in advance anyhow?

THE WITNESS: Sometimes you are obligated to do so, yes, sir. It is a very tough provision and a very complicated one in the AFTRA Guild agreement with producers, but

THE COURT: Suppose the licensee goes bankrupt.

What happens with the residual? You lose it anyhow?

THE WITNESS: Yes, sir, that has happened on occasion. As a matter of fact, there have been a number of
cases of distributors not remitting money and the distributors
going bankrupt and the producers having to make good on the
residuals.

THE COURT: I understand that. What I am still trying to get is the time frame for the remittance.

THE WITNESS: The time frame is supposed to be triggered by the distributors, based on the distributor's peculiar knowledge of the deals he has made and the areas in which he has made them, and therefore, related to the obligation for residuals and to advise the producer, who has the

primary contractual obligation with the artists, and to submit those reports and the money from the distributor to the producer so the producer can make timely payments.

THE COURT: I understand that, but he doesn't make a remittance until he derives revenue from it.

THE WITNESS: Not necessarily.

THE COURT: He is supposed to advance?

THE WITNESS: The distributor?

THE COURT: Yes.

THE WITNESS: Yes, sir; on many occasions -

THE COURT: I thought the general deal was that he takes off the top the distribution fee, recoups himself reimbursible expenses and then remits the balance promptly to the owner of the program.

tributor operated on a pure cash basis at all times, then
the calendar related thereto would function efficiently.
Unfortunately or, I guess one of the problems of the business,
he will make a deal and he may not have collected his money
before the time comes for remittance to the producer for the
purpose of payment of residual obligations.

THE COURT: That is what I am trying to pinpoint.

Is there an agreement made that regardless of what arrangement the distributor makes with the program purchases or the

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2	THE COURT: Entirely different. If you want to
3	ask whether they have a reputation for paying their bills
4	and that sort of thing, I will allow that.
5	MR. GOULD: That is what I mean
6	THE COURT: You didn't ask that.
7	MR. GOULD: All right.
8	Q Did they have a reputation for paying their
9	bills?
10	A Well, insofar as my office was concerned, the
11	answer is
12	MR. PEARSALL: Objection, your Honor.
13	Q No, no, general reputation.
14	THE COURT: The question is, you have to go back
15	to the old business again, which is silly, and that is, have
16	you ever discussed Viacom with other people in the industry
17	other than CBS, Tandem and Viacom itself?
18	THE WITNESS: Yes, sir.
19	THE COURT: All right. Did you ever discuss with
20	those people the reputation of Viscom for paying its bills?
21	THE WITNESS: Yes, sir.
22	THE COURT: And can you tell us from the speech
23	of these people in the community of television broadcasting
24	what is that reputation?
25	THE WITNESS: As of today, your Honor?

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A Yes, sir.

Q And when did you see it for the first time?

A When it was sent to me in -- within the same time frame reference as the date. It was sent to me by Mr. Perlberger.

Q And did you ever discuss the contents of this letter with Mr. Block?

A No, sir, I don't think I did.

Q Did you discuss it with anybody connected with Viacom?

A No, sir, I don't think I did.

Q Did you discuss it with Mr. Sipes?

A No, sir.

MR. GOULD: I offer this in evidence, your Honor.

MR. PEARSALL: Objection. The document is

irrelevant.

MR. GOULD: If your Honor please, may I just interrupt your reading of it for a second so I can explain why I am offering it as a single document? I think it is included in this stipulation as to the August 26 papers.

Apparently there was some question about it and that is why I am offering it as a separate document.

Am I wrong about that?

MR. PEARSALL: Yes, you are completely wrong.

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15 to 20 minutes before we adjourn for lunch, Mr. Pearsall.

TRIAL, SEPTEMBER 19, 1973 (Transcript, pages 427-440)

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MR. PEARSALL: All right.

3 CROSS-EXAMINATION

BY MR. PEARSALL:

Ω Mr. Hayes, let's go on back to the June 24 meeting that you described in the early part of your testimony.

That is June 24, 1970.

Now, when you testified in your direct examination you stated, did you not, that you had come to that meeting told Mr. Sipes that you were there for the purpose of improving all the terms; is that correct?

- A Generally, yes.
- Q Wherever you could.
- A Yes.
- Q Is that right? And one of the things that you discussed was the syndication rights, is that correct?
 - A At the June 24 meeting?
 - Q Yes.
 - A The distribution rights?
 - Q Yes.
 - A Briefly, yes, as I testified to.
- Q Now, will you tell us again, Mr. Hayes, exactly what you said to MR. Sipes and exactly what MR. Sipes said to you with respect to the question of distribution rights?
 - A To the best of my recollection, it came up in the

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I said. "At least you should give us this or give us something? you're not giving us this, you're not giving us distribution rights, you're not giving us this and that."

So you should give us something else instead?

Yes. I did not -- no, I didn't say instead of. I said, "Give us something." I wanted to get everything I could.

Q You were looking for money, for merchandising rights, for syndication rights, for below the line assistance, for advances or anything that would add up to advantage to your client Tandem?

Yes, sir.

Now, prior to this meeting on June 24 had you had any contacts at all with Mr. Sipes with respect to the negotiation of the business terms for All In The Family?

Not to my recollection, no, sir.

Did you work up for anybody a set of goals for this negotiation that was going on with Mr. Sipes in New York?

I don't know if I'd call them goals. I had a conversation with Mr. Sam Cohn and a conference call with my clients in their office, general talk about the structure of the deal and the terms, and where he was in his negotiation directly with MR. Sipes.

Q Did you make any kind of a writing in preparation

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for your meeting on June 24 as to what it was that you intended to go after at that meeting?

A I don't think I did, no, sir.

Q Now, you say in the early part of your testimony that ABC had rejected two pilots, is that correct?

A Yes, sir.

Q Did Tandem, after the rejection of the ABC pilots, make any other effort to enter into a commercial disposition of its ALL IN THE FAMILY property?

A I spoke to NBC.

Q Apart from NBC?

A And CBS.

Q Apart from CBS?

A There was nowhere else to go.

I heard you say that, Mr. Hayes, and now I am asking you whether or not in fact they did not attempt to go some place also. Were they not negotiating with United Artists?

A That was on a motion picture deal.

Q Yes. Tell us about that.

THE COURT: It was on a what?

THE WITNESS: Theatrical motion picture project.

Q After the deal with ABC broke down, didn't Tandem take the All In the Family property to United Artists with the

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idea of converting it into a theatrical motion picture?

A I personally did not. I don't recall whether

Norman or Bud took it to United Artists. At what time

frame? At one point they did talk to United Artists about

making a theatrical motion picture about All In The Family,

but I thought it was after the show had gone on the air and

been successful.

- Q Did you participate in any discussions with All
 In The Family -- with United Artists on All In The Family?
 - A No, sir.
- Q Did you discuss with Mr. Yorkin and Mr. Lear or any of the people in Tandem the advisability of talking with a motion picture producer about All In The Family?
 - A What time?
- Q This was following the rejection of the pilots by ABC.
- A No, I don't recall any conversation in that time frame. At another time frame, yes.
- Q Who were the ones at Tandem who participated in the negotiations, if any, with United Artists?

MR. GOULD: If your Honor please, I am going to object to this line as having nothing to do with the case; certainly improper cross-examination.

THE COURT: I don't understand exactly what is

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being driven at. When you bought the English rights you also got the 35 mm theatrical and everything else, is that right?

THE WITNESS: Not exactly, your Honor. We would only get the rights to make a theatrical motion picture based on an American version thereof.

THE COURT: That is what I meant, but it did include a motion picture exploitation?

We got the right of approval on a theatrical motion picture venture but it was a co-extensive, mutual approval with Beryl Virtue, and it was a source of problems continuously, and we never did make a theatrical motion picture on that mainly because the two parties could not get together on who would finance what.

THE COURT: In any event, there was a split between the television broadcasting rights and the theatrical rights?

THE WITNESS: Yes, sir.

THE COURT: Your deal with CBS ultimately did not prevent you from exploiting theatrically?

THE WITNESS: Ultimately, but that was in a renegotiation subsequently, because they had a -- I don't know whether it was in the formal agreement with CBS or not --

THE COURT: You had to have a clearance, I suppose

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because of the television run.

THE WITNESS: That's right.

BY MR. PEARSALL:

Q Mr. Hayes, approximately --

THE COURT: I want to say, Mr. Pearsall, I uphold the objection of Mr. Gould. I don't see what theatrical has to do with this case.

MR. PEARSALL: Your Honor, what happened in this case is very simple. ABC rejected the pilots. Tandem gave up the idea temporarily of putting a television series on the air, and instead decided to convert it to a motion picture.

THE COURT: What does it go to?

MR. PEARSALL: It goes to the question of the anti-trust question on the economic power. There is another market alternative here, your Honor, and it goes to the question of coercion.

THE COURT: You don't have to prove that. Everybody knows there is a motion picture market.

MR. PEARSALL: Well, in fact, your Honor, Tandem was in the midst of negotiations with United Artists at the time the CBS opportunity came along.

THE COURT: Do you have that piece of paper on that?

MR. PEARSALL: I hope to develop it through cross-

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510 a 434 jkcg Haves-cross examination of Mr. Perlberger and I have in the depositions testimony --THE COURT: Wait for Mr. Perlberger then because 4 5 Mr. Hayes says his best recollection is it was after the show was in broadcast that the whole thing came up with UA. 5 MR. PEARSALL: Maybe I can refresh his recollec-8 tion. C THE COURT: If you have a piece of paper you can. I show you exhibit 79 for identification and ask 70 Q you whether or not you received a copy of that letter? 11 12 I note I am copied in so apparently I did, yes. 13 That refers, does it not, -- this is a letter, 14 is it not, of a Mr. Perlberger to a Mr. Farrar Brown? 15

Yes, it is. A

And that contains within it a reference, does it not, as to a letter of March 11, 1970, from a Mr. Adelman?

A Yes.

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And it goes on to say, does it not, that, of course, the United Artists Corporation has nothing further to do with this project; do you see that?

MR. GOULD: Could I see what counsel is showing the witness?

MR. PEARSALL: Sure.

THE COURT: I think you should.

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Q Does that refresh your recollection as to the timing of the discussions with United Artists?

A It refreshes my recollection but I don't concur with the context in which you put it.

Q Was there not a discussion in March and April of 1970 proceeding between Tandem, United Artists, for the production of a motion picture based on All In The Family?

A To the best of my recollection there was the discussion, but not a negotiation. Now, I would be happy to elaborate on that if you want me to.

Q Yes.

THE COURT: No, I don't want you to. Was this communicated in any way -- is that your claim -- to CBS?

MR. PEARSALL: My claim, your Honor, is that a party is not coerced if it has got a market alternative readily available to it which was the case.

THE COURT: If the other side knows it. But how does CBS know about it unless they were told?

MR. PEARSALL: Coercion is the subjective problem for Tandem. Tandem is the one who is being coerced and Tandem is not, if in fact, coerced to do something against its will if in fact it has something else it can do.

THE COURT: The Court knows you can make anything into a theatrical production, but you have to have two to

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2	tango; you have to have somebody to put up the money and so
3	on. The mere fact they talked to somebody doesn't prove
4	anything.
5	MR. PEARSALL: This was a real live negotiation.
6	It broke off in April 1970, your Honor, at the time the CBS
7	opportunity became apparent. I think we are entitled
3	MR. GOULD: If your Honor please, I really don't
4	want to quarrel with my friend.
10	THE COURT: Never mind, MR. Gould. We don't need
11	any more discussion.
12	I am not going to allow any of this in.

Now, Mr. Hayes, was a written proposal made to Q CBS by Tandem prior to the June 24 meeting?

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I don't recall any, Mr. Pearsall. There may have been, but I don't know of any.

- What was the first thing that was discussed at the June 24 meeting, to your recollection?
 - I honestly don't remember what came first.
- Do you have any specific recollection of the Q order in which the points proceeded?

No, sir, I really don't. We covered everything but I don't know what came first or third or sixth.

THE COURT: You have Sekerak's notes which seem to be in some chronological order. Show them to Mr. Hayes,

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if that will refresh his recollection, or he will say he doesn't recall it happened that way.

- Q Mr. Hayes, at the conclusion of the meeting on June 24 were there any open matters that you recall were not fully resolved at that meeting?
 - A Yes, sir, I think I have testified to them.
 - Q And can you tell us what they were?

the content of the program and the meeting of the minds between Mr. Norman Lear and Mr. Richard Jenks who was vice president of CBS and the overall creative side of the company, the programming people and the program and practice continuity people; it was a controversial type of show at that date and there was serious disagreements between Mr. Lear and some of those people as to what should go in, and Don Sipes at the meeting kept making reference to the fact that, you know, this may be all a waste of time if they don't get together. That was one of the major points that was open.

The second point that was open was whether the show would be done in New York or Los Angeles.

Another point that was open had to do with the structure of the deal, of holding money for Norman Lear's exclusivity and the recapture of that payment, if any, being

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approved finally by Sipes after discussing this with his colleagues, whomever he indicated had to discuss it with.

Another thing he said he would take under consideration, let us know about, would be the merchandising rights. Another thing was the payment of money to ABC that we owed them for reimbursement amounting to, I don't know, around \$32,000, something. I don't know the exact figure.

Another question open was the casting of the show, because CBS said they didn't want two of the members of the cast and we had mutual approvals on that in the deal as negotiated.

Another question was who was going to direct the pilot and who would be the regular director. At the meeting they said Norman Lear was going to direct it, and then we said we didn't know, we though Bud Yorkin might direct it, and it was an open point.

The question of facilities was an open point

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because we didn't know exactly what facilities would be needed and what was available. They insisted on our using their facilities, and we counted with the fact that we didn't know whether they were adequate or not.

We requested office space at CBS Television City.

They didn't know whether they could give it to us or not.

That was an open point.

We requested a preproduction advance of \$50,000 and Sipes would not approve it at that meeting.

We requested start up money. He would not approve it at that meeting and these were all open points. There may have been more.

THE COURT: Did you have a lease or rental agreement with them as part of your below the line cost?

THE WITNESS: It was based on what they call their rate card which is the same price supposedly for all contractors.

THE COURT: That was a budget line, below the line?
THE WITNESS: Yes, sir.

At the time that you were discussing the syndication rights with Mr. Sipes did you discuss with him the possibility that if you retained the distribution rights you might give CBS a private share?

I don't recall ever making that proposal, no, sir.

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- O Did you ask him whether or not he would be willing to take a discount from his standard distribution fees
 or a lower distribution fee?
 - A Yas, sir. We requested that but he rejected it.
- Q And did you ask Mr. Sipes to pursue this question of whether or not CBS should grant syndication rights to Tandem with any of the other officers or executives of CBS, such as the president, Mr. Wood?

A No. sir.

THE COURT. I want the record to show again that although you persist in using syndication rights, they are not syndication rights, they are distribution rights in syndication, because syndication rights always remain with the owner of the copyright.

- Pollowing that meeting, did you, over the next ten or 30 days, send any kind of a writing to CBS requesting a reconsideration of the position you say that MR. Sipes took with respect to these rights of distribution at the June 24, 1970 meeting?
 - A No, sar, I did not submit any writing.

 THE COURT: Would this be a good place to stop?

 MR. PEARSALL: I guess so,

THE COURT: I just want to say something before we adjourn lest I forgat.